IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT FAIRBANKS

AARON SHOEMAKER,	)	
	)	
Appellant,	)	
	)	
vs.	)	
	)	Case No. 4FA-22-01329CI
STATE OF ALASKA,	)	
	)	
Appellee.	)	
	)	

ORDER PARTIALLY AFFIRMING AND PARTIALLY VACATING THE BOARD OF CHIROPRACTIC EXAMINERS' DECISION REGARDING DR. AARON SHOEMAKER

I. INTRODUCTION

Following months of psychosis induced behavior and criminal activity, Dr. Aaron Shoemaker's chiropractic license was summarily suspended by the Chiropractic Board of Examiners. Arising from the same set of events, the Board brought eight counts of misconduct against Dr. Shoemaker and held a trial to decide appropriate disciplinary sanctions. Following a three-day trial, the Board decided to revoke Dr. Shoemaker's license.

Dr. Shoemaker filed an appeal of the Chiropractors Board of Examiner's decision to revoke his chiropractic license. On August 30, 2023, both parties appeared for oral arguments. Having reviewed the record and considered both parties' arguments, the court now AFFIRMS the Board's decision regarding disciplinary actions based on one of the eight counts, but VACATES the Board's decision regarding the sufficiency of evidence to support the remaining counts. The court additionally VACATES the Board's decision to revoke Dr. Shoemaker's license and REMANDS for a decision consistent with other disciplinary decisions as described below.

II. BACKGROUND AND PROCEDURAL HISTORY

A. Early Incident in 2018 Arising from Consensual Massage of Advanced Chiropractic Employee

Shortly after acquiring his chiropractic license, Dr. Shoemaker opened his own practice, Advanced Chiropractic. As a benefit to his employees, Dr. Shoemaker provided free massages. One employee taking advantage of this offering was C.M. C.M. complained of hip issues, but Dr. Shoemaker was not responsible for diagnosing those problems, nor did he create any sort of treatment plan or keep notes on her progress. On July 12, 2018, Dr. Shoemaker met with C.M. after work hours at his office to assist with her hip discomfort. During this session, Dr. Shoemaker used electric stimulation, performed an ultrasound, as well as provided an adjustment with a follow-up massage. The massage was consensual and a typical part of post-adjustment procedures. As it continued, the massage became more sexual when Dr. Shoemaker touched C.M. on her inner thigh a few times. Leading up to this point, Dr. Shoemaker continually asked her if the contact and hand placement was okay. C.M. each time said that it was, but at some point, C.M. indicated that she was no longer comfortable. Dr. Shoemaker immediately stopped, left the room, and allowed C.M. to get dressed and leave.

C.M. reported the incident to the Fairbanks Police Department (FPD) the next day. Dr. Shoemaker fully cooperated with FPD's investigation. However, after C.M. told the District Attorney's office that she knew the massage was going to be sexual in nature and that she was okay with everything that happened, the DA decided to not press charges against Dr. Shoemaker. C.M. did not report the incident to the Board despite an affirmative obligation to do so. C.M. also did not testify at Dr. Shoemaker's Board hearing, despite being subpoenaed to do so. No other employee, patient, or acquaintance of Dr. Shoemaker has ever made similar allegations and C.M. has made no other allegations outside of this incident, nor has Dr. Shoemaker admitted to pursuing sexual encounters with other employees or patients. As far as the evidence can establish, this was a one-time, isolated

offense. This incident came to the Board's attention only after investigation into the below events, several years later.

B. Mental Health Crisis, March–August 2020

Like many after the onset of the COVID-19 pandemic, Dr. Shoemaker's mental health went into sharp decline. After the passage of Mandate 015 requiring the use of surgical masks while treating patients, Dr. Shoemaker took to Facebook and YouTube to express his disagreement with the efficacy and need for masks. (*While not widely known at the time, research has since been published showing the low efficacy of masks in preventing the spread of COVID-19.)* In one post, Dr. Shoemaker expressed his commitment to defying the mandate: "I hope Big Brother doesn't find out I'm not wearing a mask at work. But if they do it's ok. I will stand behind my education and constitution. I will not wear a mask at Advanced Chiropractic. . .." Despite his admonitions, there is no evidence that Dr. Shoemaker ever defied this mandate while practicing. Importantly, there is direct testimonial evidence from patient Bradford Bunnell that Dr. Shoemaker did in fact wear a mask while treating him.

By June of 2020, Dr. Shoemaker's mental health had continued to decline to the point that he was arrested for stealing an asphalt roller/compactor. He found the roller unlocked with the key inside at a construction staging area. He drove it along Richardson highway, knocked over several road signs and eventually tried to drive the vehicle into a pond, which ended with Dr. Shoemaker stuck inside a dumpster. He posted pictures during his joyride to the Advanced Chiropractic Facebook page. Dr. Shoemaker and others called 911 and Dr. Shoemaker was eventually found, rescued from the dumpster, and arrested for felony theft and criminal mischief.

Dr. Shoemaker was released from custody on July 21, 2020, with court-ordered release conditions requiring him to participate in electronic monitoring and random urinalysis. However, Dr. Shoemaker's behavior continued to escalate, giving rise to additional complaints filed against him.

C. Post Mental Health Crisis

Dr. Shoemaker violated the conditions of his release several times and was arrested a final time in late August/Early September 2020. He was committed to Fairbanks Memorial Hospital and later transferred to the Alaska Psychiatric Institute. After a six-day hospitalization, Dr. Shoemaker was transferred to DOC custody and released into the care of his mother in October 2020.

On March 4, 2021, Dr. Shoemaker pled guilty and was convicted of charges reduced from felony to misdemeanor for attempted vehicle theft and subsequent violations of conditions of release.

D. Board of Chiropractors Licensing Decision

Beginning in May of 2020, the Division of Corporations, Business and Professional Licensing (the Division) received complaints about Dr. Shoemaker's social media comments on masking. Throughout the course of the summer, additional complaints about Dr. Shoemaker's escalating behavior were lodged and an investigation revealed the previous massage incident from 2018. On September 14, 2020, the Board of Chiropractic Examiners (the Board) determined that Dr. Shoemaker was a "clear and immediate danger to public health and safety" and, accordingly, summarily suspended Dr. Shoemaker's chiropractic license until he could demonstrate that he was fit to practice. The Division also brought eight counts for discipline; three counts arising from the 2018 massage incident, one count for refusing to adhere to masking policies, two counts for his criminal convictions relating to a stolen construction vehicle, and one count for continuing to practice while he was unfit to do so. The suspension and disciplinary proceeding hearings were consolidated, but stayed until Dr. Shoemaker's criminal proceedings were resolved. After a three-day hearing in October 2022 the Board decided to permanently revoke Dr. Shoemaker's chiropractic license in the state of Alaska.

III. STANDARD OF REVIEW

Where, as here, the superior court acts as an intermediate court of appeal in an administrative case, the court undertakes an independent review of the administrative record. The court applies four standards of review; (a) the "substantial evidence" test when determining questions of fact, (b) the "reasonable basis" test for questions of law in areas of agency expertise, (c) the "substantial judgement" test for questions of law not within an agency's expertise, and (d) the "reasonable and not arbitrary" test for review of administrative regulations.

So long as the Board's factual findings are supported by *substantial evidence*, the court will uphold its findings. The substantial evidence test is highly deferential and substantial evidence is any such evidence as a reasonable mind might accept as adequate to support a conclusion.

The Board's ultimate selection of a particular disciplinary sanction receives more deference and the court will review only for abuse of discretion.

IV. APPEAL ANALYSIS

The issues presented on appeal are as follows:

(1) Did the Board have a reasonable basis for subjecting Dr. Shoemaker to disciplinary action?

(2) Did the Board abuse its discretion when choosing to permanently revoke Dr. Shoemaker's license?

A. Did the Board have a reasonable basis for subjecting Dr. Shoemaker to disciplinary action?

At issue on appeal is the Board's decision to revoke Dr. Shoemaker's chiropractic license as a disciplinary response to eight counts of discipline brought by the Division. To begin the analysis, this court will review the Board's findings to determine whether there was substantial evidence supporting each count of disciplinary action. Those disciplinary counts are summarized as follows:

Counts I, VII, and VIII relating to Dr. Shoemaker's sexual contact/attempted sexual contact with a patient and attempt to remove a patient's underwear.

Count II for continuing or attempting to continue to practice after becoming unfit to do so.

Count III for refusing to comply with the health mandate in violation of minimal professional standards.

Counts IV, V, and VI relating to convictions of crimes which affect ability to practice competently and safely.

While not at issue, the court will briefly address the Board's decision to summarily suspend Dr. Shoemaker's license.

i. The Board had a reasonable basis for summarily suspending Dr. Shoemaker's license.

AS 08.01.07(c) allows a board to "summarily suspend a licensee from the practice of the profession before a final hearing is held or during an appeal if the board finds that the licensee poses a clear and immediate danger to the public health and safety." The Board, following the suggestion of the Division, summarily suspended Dr. Shoemaker's license in September of 2020 based on his erratic behavior during his then ongoing mental health crisis. At the disciplinary hearing, the Board determined that the Division met its burden of proof to show that the suspension was warranted.

The Board noted that at the time of suspension, Dr. Shoemaker was actively engaged in self-described psychotic behavior. He threatened to shoot law enforcement officers, stole a construction vehicle and destroyed public property with it, and digitally and in writing berated strangers, insurance companies, an Assistant District Attorney, and senators. All of these behaviors, the Board concluded, were inconsistent with an ability to safely and competently practice patient care.

Dr. Shoemaker has not challenged this aspect of Board's decision but the court agrees with the Board's decision and upholds the temporary suspension due to what reasonably appeared to be active psychosis leading to dangerousness.

ii. The Board did not have substantial evidence to support the claims of sexual misconduct.

At issue at the Board's disciplinary hearing was whether C.M. could be considered a patient for the purpose of the statute and whether there was substantial evidence to support a finding that Dr. Shoemaker's actions were lewd or immoral. The Board decided in the affirmative on both issues; C.M. should be considered a patient and evidence showed that Dr. Shoemaker's actions were lewd and immoral. The Board is correct that C.M. is a patient based on the totality of the circumstances. However, the Board was incorrect that there was sufficient evidence to support a finding that Dr. Shoemaker's action were lewd and immoral. Without testimony from C.M. or other evidence there is not sufficient evidence in the record to support a finding that Dr. Shoemaker's actions were lewd and immoral. Accordingly, the Board erred by using these counts as a basis for discipline.

Under AS 08.20.170(8), the Board can impose a disciplinary sanction on a licensee who "engaged in lewd or immoral conduct in connection with the delivery of professional service to *patients*." (Emphasis added). As noted in both parties' briefing, the statute does not define "patient" or give guidance for when a patient-physician relationship forms. It is uncontested that C.M. was an employee at the time of the incident. This fact alone is not determinative of C.M.'s status. Dr. Shoemaker argues that he made no diagnosis, no evaluations or treatment plans, made no appointments, sent no bills, and kept no chart or chart notes.

The Board reaches the opposite conclusion—C.M. was a patient for the purposes of this interaction. To reach this conclusion, the Board relied on other definitions in the statute. The definition of "chiropractic" includes the provision that "the primary

therapeutic vehicle of chiropractic is chiropractic adjustment." "Chiropractic adjustment" is defined as

> the application of a precisely controlled force applied by hand or by mechanical device to a specific focal point of the anatomy for the express purpose of creating a desired angular movement in skeletal joint structures in order to eliminate or decrease interference with neural transmission and correct or attempt to correct subluxation complex.

By Dr. Shoemaker's own words, "part of the benefits of working [at Advanced Chiropractic] is that one of the benefits that I can offer is free chiropractic." C.M. was a recipient of that benefit and her sessions included not only massages but chiropractic adjustment, ultrasounds, and electric probing. Dr. Shoemaker also testified to treating C.M. eight to ten times, sometimes multiple times in a week, which he explained was normal because "a person coming in for chiropractic treatment will often times get three visits a week starting out, and then taper them down."

Based on a totality of the circumstances, the Board concluded that C.M. was a patient of Dr. Shoemaker's in the context of the massage at issue. The Board also cited public interest reasons to recognize a patient-physician relationship here. "It is in the best interests of the public to acknowledge the formation of a doctor-patient relationship under the circumstances described here, and there is a reasonable expectation that trained and licensed professionals will understand both the creation and the boundaries of such relationships."

The court agrees with the Board. There are sufficient facts to support the conclusion that C.M. was a patient of Dr. Shoemaker's at the time of the massage incident. However, in order to discipline Dr. Shoemaker for the encounter, the Board must also have substantial evidence in the record that this interaction constituted "lewd or immoral conduct."

Under AS 08.20.170(8) the Board can impose a disciplinary sanction on a licensee who "engaged in lewd or immoral conduct in connection with the delivery of professional service to patients." As further outlined in 12 AAC 16.930, it is no defense the patient consented to the interaction. Additionally, this section defines "lewd or immoral conduct"

as including: (1) sexual misconduct – "behavior, gesture, or an expression that may reasonably be interpreted as seductive, sexually suggestive, or sexually demeaning to a patient;" (2) sexual contact – "touching, directly or through the patient's clothing, a patient's genitals, anus, or female breast, or causing the patient to touch, directly or through clothing, the licensee's or patient's genitals, anus, or female breast;" or (3) attempted sexual contact – "engaging in conduct that constitutes a substantial step towards sexual contact." Notably, excluded from the definition of sexual contact is "acts performed for the purpose of administering a recognized and lawful form of chiropractic examination or treatment that is reasonably adapted to promoting the physical or mental health of the person being treated."

Here, there is not enough evidence in the record to make any supported finding of what happened. There is no evidence that establishes that C.M. was actually penetrated or touched in any way that constituted sexual contact or if any of the touches rose above what would be considered "for the purpose of administering a recognized and lawful form of chiropractic examination or treatment" constituting attempted sexual conduct. There is also no evidence to support a finding of sexual misconduct as there is not a clear enough picture of what occurred. The facts on the record do not provide sufficient basis for finding 12 AAC 16.930(1), (2), or (3) are satisfied.

C.M. has chosen not to testify despite being ordered to do so. Any statements of hers considered now would be hearsay, which are generally admissible at hearings such as the Board's, even if it would not be admissible at court. However, the hearsay must be corroborated. The only available source of corroboration since there was never a full investigation into the incident is Dr. Shoemaker's testimony. Dr. Shoemaker's testimony does not corroborate a finding of sexual penetration, sexual contact, or an attempt to commit sexual penetration or sexual contact.

Dr. Shoemaker also never testified to any actual penetration or contact. He did testify to touching C.M.'s hips and inner thighs, but nothing about his testimony proves

that it was anything more than necessary to the chiropractic treatment of an ailed hip. Dr. Shoemaker's additional statements of hoping it went further or it being his desire to take it further are not grounds for discipline under the statute. Neither of those statements can be considered attempt—i.e., the completion of a substantial step towards sexual contact or penetration. Without more, there is simply not enough to constitute substantial evidence of any sexual misconduct. The Board erred in finding that there was.

iii. The Board did not have substantial evidence that Dr. Shoemaker continued to practice while being unfit to do so.

The Board relied on tenuous evidence to surmise that Dr. Shoemaker continued to see patients during his psychosis. Despite the opportunity to do so during its investigation, the Board never collected a calendar, planner, billing receipts, or any other direct evidence that would prove whether or not Dr. Shoemaker did in fact see patients. When aiming for the higher standard of imposing discipline, the Board's patchwork fabrication is not enough. The Board erred in finding Dr. Shoemaker subject to discipline on this count.

AS 08.20.170 states that a chiropractor may not continue or attempt to continue practicing after becoming unfit do to so, whether because of "addiction or severe dependency on alcohol or a drug that impairs the person's ability to practice safely" or because of "physical or mental disability."

As an initial note, it is unclear whether the Board is disciplining Dr. Shoemaker for attempting to practice in Alaska, Colombia, or both. Regardless, there is not sufficient evidence that Dr. Shoemaker continued to practice in Alaska and the Board does not have jurisdiction to discipline Dr. Shoemaker for his actions in Colombia or anywhere outside of Alaska. To the extent that Dr. Shoemaker's actions in Colombia factored in the Board's disciplinary decision, the Board erred.

As for practicing in Alaska, again, there is not enough evidence on the record to support a finding that Dr. Shoemaker saw, or attempted to see, any patients during the summer of 2020. The Board states that Dr. Shoemaker kept his practice open, evidencing

that he was still seeing patients. The Board ignores that Dr. Shoemaker was living in his office during this time. The Board also points to the fact that Dr. Shoemaker was in contact with insurance agencies about patient coverage. Dr. Shoemaker is well within his rights to interface about coverage and payment and to collect payment that is owed to him. None of this is any evidence that he was actively seeing patients. There was no testimony from Dr. Shoemaker or the insurance providers that Dr. Shoemaker ever explicitly or implicitly mentioned seeing patients during this time. Even telling those insurance agents, or saying to another that he had more patients than he could handle, is not enough to prove that Dr. Shoemaker was seeing patients. Without a schedule book, testimony from patients, or other direct evidence, there is simply not enough evidence for the Board to conclude, by a preponderance of the evidence, that Dr. Shoemaker continued, or attempted to, see patients during his on-going psychosis. The Board erred in concluding otherwise.

iv. The Board did not have sufficient evidence that Dr. Shoemaker did not adhere to masking protocol.

The Board relied exclusively on Dr. Shoemaker's own admonitions that he would not adhere to masking protocol in order to find that Dr. Shoemaker in fact violated masking mandates. Dr. Shoemaker had valid reasons for speaking out and contemporary support for his discourse. The Board cannot rely solely on these statements to prove that Dr. Shoemaker refused to wear a mask, especially when there is direct testimony establishing that Dr. Shoemaker did comply with masking mandates. The Board erred in doing so.

12 AAC 16.920 requires chiropractors to adhere to a minimum standard of professional care. This standard is reiterated in the American Chiropractic Association's Code of Ethics ch. 2— "Doctors of chiropractic should maintain the highest standards of professional and personal conduct and should comply with all governmental jurisdictional rules and regulations."

Alaska Governor Dunleavy signed into order COVID-19 Health Mandate 015 in April of 2020. This mandate required, among other things, that health care providers wear masks while providing patient care.

Here, again, the Board has not established by a preponderance of the evidence that Dr. Shoemaker did not comply with this mandate. The only evidence the Board points to in support of discipline here are Dr. Shoemaker's personal opinions about the mandate. Dr. Shoemaker took to social media to participate in a valid expression of discourse. Nothing in Alaska's statutes nor the American Chiropractic Association Codes requires Dr. Shoemaker to agree with all governmental jurisdictional rules and regulations. Furthermore, Dr. Shoemaker's viewpoints were widely held at the time and for well-supported reasons.[1]

All of Dr. Shoemaker's public protests and rantings do nothing to provide evidence that he disobeyed the mandate when it came time to see patients, no matter how explicitly he said he would not.[2] Dr. Shoemaker had valid reasons, factually and legally, to speak out in public against the mask mandates. Until there is testimony or other evidence that Dr. Shoemaker did not wear a mask while attending to patients, the Board does not have sufficient evidence to impose discipline for this count.

---

[1] Contemporaneously with Dr. Shoemaker's statements of mistrust toward governmental officials imposing unprecedented mandates, Dr. Fauci, chief medical advisor to the president, revealed that he had previously misrepresented the number of vaccinated individuals needed to achieve herd immunity. In reality, the number was higher, but Dr. Fauci intentionally misrepresented a lower number to encourage greater number of vaccinations. Additionally, Dr. Fauci's initial recommendations to not wear a mask were motivated not by medical expertise, but by a concern that there would quickly be a shortage of N95 and other surgical masks if the public chose to wear them. These admitted lies about COVID-19 and the efficacy of masks were a reasonable basis for members of the public, including Dr. Shoemaker, to express skepticism of the COVID-19 mandates and to protest them by claiming he would not comply. Marco Rubio, *Dr. Fauci lied about coronavirus to manipulate our behavior – that's appalling,* FOX NEWS, (Dec. 30, 2020, 7:00 AM), https://www.foxnews.com/opinion/dr-anthony-fauci-coronavirus-marco-rubio.

[2] The Board looked at many of Dr. Shoemaker's other social media postings and YouTube videos when considering his suspension. When charged with disciplinary actions, however, these social media posts were not a point of concern. His social media posts, like the ones here, as stated by Dr. Shoemaker's own lawyer, are just bad business practices. While unhinged, they have no real bearing on his fitness for practice and therefore are not grounds for discipline.

v. The Board did have sufficient evidence of Dr. Shoemaker's criminal activity but the Board failed to consider mitigating factors when imposing discipline.

The Board was right to find that Dr. Shoemaker's criminal activity was the type of activity that would affect his ability to practice competently and safely. However, there were several mitigating factors at play that the Board should have considered when choosing discipline. Because it did not consider those factors, the Board's decision to revoke here is unsupported by the weight of the evidence and is an abuse of its discretion to impose discipline.

The Board's governing statutes allow it to impose discipline on a licensee who has "been convicted, including a conviction based on a guilty plea or plea of nolo contendere, of a felony or other crime that affects the person's ability to practice competently and safely."[3] In interpreting the second part, the Alaska Supreme Court has held that "criminal violations may bear on one's fitness to practice a particular profession, regardless of whether the violations are committed while the licensee performs professional duties."[4]

Dr. Shoemaker stole an asphalt roller/compactor from a construction site, drove it down the highway, knocking down several streets sign in the process, and eventually drove the vehicle into a pond. Initially, Dr. Shoemaker was charged with felony theft and criminal mischief. He later pled guilty and received a reduced charge of misdemeanor attempted theft.

The Board was correct to decide that this crime was disciplinable under its statute. While the charges were eventually reduced to misdemeanors, the crime is one that "affects the person's ability to practice competently and safely." The Board creates the logical connection that if the crime is a crime of moral turpitude, then the crime necessarily impacts Dr. Shoemaker's ability to practice. Theft is undoubtedly a crime of moral turpitude; it constitutes "wicked, deviant behavior constituting an immoral, unethical, or unjust

[3] AS 08.20.170(a)(4)(a)
[4] *Wendte v. State, Bd. of Real Est. Appraisers,* 70 P.3d 1089, 1092 (Alaska 2003).

departure from ordinary social standards such that it would shock a community."[5] Crimes of moral turpitude affect a person's ability to practice as it brings into question their honesty, ethicality, and ability to interface with public, patients, and professionals.[6]

However, not all crimes of moral turpitude should be disciplined equally. Moral turpitude exists on a scale. Logically, pre-meditated serial murder is more society-disrupting than petty theft. And even some thefts involve more moral turpitude than others. Dr. Shoemaker could have stolen the construction equipment for his own private use or to maliciously and intentionally destroy a hospital or an orphanage. Surely these crimes would involve more moral turpitude than Dr. Shoemaker's immoral joy-ride. Therefore, even though all moral turpitude crimes may bear on a person's ability to practice, not all moral turpitude crimes should be disciplined the same. The Board in this case had several mitigating factors to include in its discipline determination, but failed to do so.

The Board should have considered several mitigating factors when deciding what method of discipline to pursue. Firstly, the Board failed to afford weight to Dr. Shoemaker's then on-going mental health crisis. It dismissed his health crisis simply because he did not admit he was experiencing one. But requiring those in then on-going, or even for a time afterwards, health crises to admit to the psychosis before allowing it mitigate their actions is a slippery slope, an unfair standard and not at all supported by the law. The Board should have considered Dr. Shoemaker's psychosis—which was so severe it led to his involuntary mental commitment—as a mitigating factor to the severity of his crime, whether or not he was ready to admit that it existed.

---

[5] Cornell Law School Legal Information Institute

[6] The Board also makes several references to Dr. Shoemaker's "norm-violative behaviors" – his social media posts, YouTube videos, defecating on the floor of his apartment after being evicted, among others. While these behaviors may violate societal norms, they are not a basis for discipline under the Board's governing statutes. The Board cannot pile up these behaviors to punish Dr. Shoemaker. A chiropractor that chooses to style his hair in a lime green mohawk would also be considered "norm-violating," but these actions would certainly not be justifiable means for discipline. Accordingly, here, if we remove any "norm-violating" action the Board takes offense to, but has no grounds to discipline, the only justifiable means for disciplinary action is Dr. Shoemaker's construction equipment debacle.

The Board should have also considered that by the time Dr. Shoemaker was sentenced, these crimes were reduced to misdemeanors. The Board still has the authority to discipline misdemeanors under the second clause of the statute. However, imposing revocation for misdemeanors is incongruous, allows no room for harsher punishments for harsher crimes, and is not supported by the facts here.[7]

While the Board was well within its right to discipline Dr. Shoemaker following his conviction, the Board failed to consider mitigating factors when imposing specific sanctions. Dr. Shoemaker's felonies were reduced to one misdemeanor and he was in the middle of an on-going psychosis at the time of his arrest. Considering these factors along with the mid-grade severity of his original crime does not amount to license revocation. In this way, the Board erred.

B. Did the Board abuse its discretion when choosing to permanently revoke Dr. Shoemaker's license?

The Board has broad discretion with which to impose disciplinary sanctions. This discretion ranges from written reprimand, to requiring professional education courses, all the way up to revoking a practitioner's license. However, as outlined in AS 08.01.075(f), "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." For the revocation to have been proper, the Board must, on the record, explain how its decision is consistent with previous decisions or why it was justified in deviating from a consistency. Failing to do so was an abuse of the Board's disciplinary power.

The Board asserts that this is a case of first impression for it and therefore it need not look at other disciplinary decisions.

---

[7] The Board also attempts to consider Dr. Shoemaker's subsequent violations of conditions of release. In its opinion, it even admitted that these violations were less relevant as they were committed farther into Dr. Shoemaker's psychosis and because the violations were not inherently trust-based. As such, these violations do little to support a highly increased sanction like revocation and the Board was wrong to rely on them for this purpose.

> That requirement does not apply here, however, because there are no prior Board cases – whether resolved through consent agreements or otherwise – that present "similar facts" to this one. This case is notable because of the scope of behaviors – sexual misconduct, willfully violating a Health Mandate, practicing while unfit, and criminal conduct – and the fact that some of the conduct took place years before the conduct that arose during an apparent mental health episode.

While it is true that this is a first-time case for the Board, it does not then follow that it is relieved of its duty to be consistent with other disciplinary decisions. If anything, being a case of first impression makes consistency more important to ensure that the Chiropractic Board is establishing solid precedent that will stand up over time and that is equitable to other medical fields' disciplinary practices. A decision supported by several footnotes of analogous decisions is far superior precedent to a decision seemingly pulled out of thin air standing on its own.

The Board does not exist in isolation, however. It has analogous counterparts in other medical disciplines as well as chiropractic boards in other states. Like a court looks to sister courts or sister states for persuasive guidance, so too can the Board look at other disciplinary boards and other states. The Board draws comparisons between chiropractors, medial staff, and lawyers in its opinion in reference to the similar standards of professional ethics. The Board notes that other professions have similar statutory provisions regarding disciplinable actions. In fact, the statutory language for the Alaska State Medical Board is nearly verbatim that of the Chiropractic Board. The Board, however, did not consider any of the Medical Board's disciplinary procedures. Nor did it consider any disciplinary opinions from chiropractic boards from other states. This was an error.

While the Chiropractic Board is free to decide its own method of discipline for this case and all its cases going forward, it is telling to look at how often the Medical Board has relied on license revocation as a disciplinary means. The Medical Board has only ever

revoked seven licenses[8]: (1) in 1985 after a felony drug conviction; (2) in 1987 after a fraud conviction; (3) in 2004 the Medical Board revoked the license of a doctor who had revoked or suspended licenses in seven other states (the reason for those revocations and suspensions is unknown); (4) in 2006 after a felony conviction of misconduct involving controlled substances; (5) in 2007 after a conviction on five felony counts of financial institution fraud and one count of credit card fraud; (6) in 2008 the Medical Board revoked the license of Dr. Gerlay, the case referenced by Appellant, because of his abuse of prescribing powers, allegations of impairment while working, failure to follow Board orders, inadequate and non-existent medical records, and sexual misconduct with multiple patients; and (7) in 2013 after sixteen federal convictions for health care fraud. The Medical Board has not pursued revocation as a disciplinary action since 2013. The Medical Board in total has imposed over 900 sanctions.[9] It has revoked a license in less than 1% of those cases.

There is also ample guidance from chiropractic boards outside of Alaska. While each state has its own statutory framework and disciplinary guidelines, it would still be more helpful than not to rely on these decisions to some degree when addressing an issue of first impression and creating precedent. An elementary Google search of "chiropractic board revoking license" conjures up a handful of news articles from multiple states detailing cases of license revocation. Many of these news articles directly link to the official board decision, but if not, it still provides enough information to find it with one additional search. The same Google search reveals that California publishes a monthly report of its board's actions. Analogous cases for the Alaska board to use are plentiful and readily available with only basic search skills. Taking the time to do so, while fulfilling its obligation to be consistent, would have also proved immensely useful to the Board.

---

[8] Alaska State Medical Board, Summary of Board Actions, 1997 – Present and Alaska State Medical Board, Report of Licensing Actions, 1985 – 8/1/1997

[9] *Id.*

The Board has a statutory duty to be consistent with its previous decisions. While this is a case of first impression and the first case the Board will publish, the Board was not relieved of its duty to be consistent. To fulfill its statutory duty and to ensure quality of precedence that it will set, the Board can, and should have, looked to decisions made by other Alaskan disciplinary boards and chiropractic board of other states. The Board is ultimately free to establish whatever system of discipline it choses, as long as its statutory mandate to be consistent or explain inconsistencies is met. That mandate was not met here, and in that way the Board erred.

V. CONCLUSION

While Dr. Shoemaker's actions in whole created sufficient justification for summary suspension, further investigation and testimony were not enough to support the higher evidentiary standard needed to impose disciplinary sanctions on most of the counts alleged. Even if such standard had been reached, the Board abused its discretion by choosing revocation as the sanction. The Board is setting itself up for disaster by choosing revocation for its first published order, leaving no room for more extreme punishments for more extreme conduct. The Board also ignored its statutory duty to be consistent with other decisions, ignoring the precedent set by other boards in Alaska and other chiropractic boards outside of Alaska. In these ways, the Board has erred and its judgment must be set aside. REMANDED.

DATED this 21st day of September, 2023.

Thomas I. Temple
Superior Court Judge

I certify that on 9/21/23 copies of this were sent to: Carlson, Burley

CLERK: BP