SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3266-22

IN THE MATTER OF THE LICENSE OF RAYMOND D. REITER, M.D. LICENSE NO. 25MA05458300 TO PRACTICE MEDICINE AND SURGERY IN THE STATE OF NEW JERSEY.

Argued April 29, 2024 – Decided June 27, 2024

Before Judges Gilson, DeAlmeida, and Jacobs.

On appeal from the New Jersey State Board of Medical Examiners, Division of Consumer Affairs, Department of Law and Public Safety.

Joseph M. Gorrell argued the cause for appellant Raymond D. Reiter, M.D. (Brach Eichler LLC, attorneys; Joseph M. Gorrell, of counsel and on the briefs).

Daniel Evan Leef Hewitt, Deputy Attorney General, argued the cause for respondent New Jersey State Board of Medical Examiners (Matthew J. Platkin, Attorney General, attorney; Sara M. Gregory, Assistant Attorney General, of counsel; Daniel Evan Leef Hewitt, on the brief).

PER CURIAM

This appeal arises out of a 2023 decision by the New Jersey State Board of Medical Examiners (the Board) not to renew the medical license of appellant Raymond D. Reiter. In 2022, the Legislature enacted a statute prohibiting any state board from issuing or renewing a license to a healthcare professional if the applicant had been convicted of certain crimes, including sexual assault and criminal sexual contact. N.J.S.A. 45:1-15.9.

Appellant appeals from a July 7, 2023 final agency decision by the Board, which denied his motion to reconsider a decision disqualifying appellant from eligibility for license renewal as a medical doctor because in 2001, appellant had pled guilty to second-degree sexual assault, N.J.S.A. 2C:14-2(c)(1), and four counts of fourth-degree criminal sexual contact, N.J.S.A. 2C:14-3(b). Appellant argues that the Board's decision retroactively applied the 2022 statute, and the retroactive application is unconstitutional, a manifest injustice, and fundamentally unfair. We reject those arguments because the Board did not apply the 2022 statute retroactively; rather, the Board applied the statute to appellant's 2023 licensure renewal. Moreover, we hold that the Board correctly interpreted the statute and correctly determined that appellant's medical license could not be renewed in 2023. Therefore, we affirm the Board's decision.

I.

We discern the facts from the record, noting that the material facts are not in dispute.

In the 1990s, appellant had a license to practice medicine and surgery in New Jersey. In 1999, appellant was charged with sexual assault and criminal sexual contact related to his conduct with several female patients. Later that same year, appellant voluntarily surrendered his medical license.

In March 2001, appellant pled guilty to one count of second-degree sexual assault and four counts of fourth-degree criminal sexual contact relating to his conduct with five female patients. In October 2001, the Board revoked appellant's medical license and barred him from reapplying for a medical license for five years.

In July 2008, appellant's license was reinstated for a period of eighteen months "for the limited purpose of allowing him to comply with an educational remediation plan." Accordingly, the Board reinstated appellant's medical license subject to conditions on his practice, including a requirement that he be chaperoned whenever he was with female patients. Two years later, in July 2010, the Board extended appellant's limited medical license. The following year, in December 2011, appellant's medical license was reinstated with the

restrictions, including that he was to be chaperoned when he was with female patients.

The Board renews medical licenses on a bi-annual cycle. So, after 2011, appellant's medical license was periodically renewed, and his most recent license renewal was issued on June 30, 2021. That license expired on June 30, 2023.

In late 2021, the Legislature passed, and in early 2022, the Governor signed, a statute that prohibited any state board or agency from granting an initial license to or renewing the license of a healthcare professional who had previously been convicted of certain crimes, including sexual assault and criminal sexual contact. L. 2021, c. 345, § 3 (codified at N.J.S.A. 45:1-15.9). In that regard, the statute states that a state board:

> Shall not issue an initial license, certification or registration, or renew, reinstate or reactivate a license, certification or registration unless the entity has first determined that no criminal history record or record with the National Practitioner Data Bank exists demonstrating that an applicant for a license, certification, or registration in a health care profession or occupation has been convicted of sexual assault, criminal sexual contact or lewdness pursuant to N.J.S.A. 2C:14-2, N.J.S.A. 2C:14-3, and N.J.S.A. 2C:14-4 that is of the first, second, third or fourth degree, endangering the welfare of a child pursuant to paragraph (1) of subsection a. of N.J.S.A. 2C:24-4, attempting to lure or entice a child pursuant to section

> 1 of L. 1993, c. 291, or equivalent offenses in another jurisdiction.
>
> [N.J.S.A. 45:1-15.9(a) (citations reformatted).]

The statute stated that it was to become effective immediately on January 10, 2022. L. 2021, c. 345, § 4.

On April 6, 2023, the Board sent appellant written notification informing him that if he applied to renew his medical license, the Board would deny the application. Specifically, the Board's letter stated:

> This letter serves as notification that the [Board], consistent with N.J.S.A. 45:1-15.9, will deny any application for renewal of license that you might file at the end of the current licensure cycle, i.e., June 30, 2023. Pursuant to N.J.S.A. 45:1-15.9, the Board shall not renew a license without first determining that no criminal record exists demonstrating that the applicant has been convicted of criminal sexual contact pursuant to N.J.S.A. 2C:14-2 or N.J.S.A. 2C:14-3.
>
> A review of your May 31, 2001 Judgment of Conviction[] demonstrates that you have a criminal history that disqualifies you from eligibility for licensure renewal. You pled guilty in Superior Court to [four] counts of criminal sexual contact in the fourth degree, pursuant to N.J.S.A. 2C:14-3(b), and [one] count of sexual assault in the second degree, pursuant to N.J.S.A. 2C:14-2(c)(1), for which you were sentenced to three years of incarceration. . . .
>
> . . . .

> You should continue to practice in a manner consistent with the extant restrictions and limitations in the Board's [December 9, 2011 third order of reinstatement] until your license expires.

On May 1, 2023, counsel for appellant wrote to the Board requesting a hearing before the Office of Administrative Law (OAL) and a stay of appellant's disqualification from practicing medicine. The Board responded through a letter from its counsel, informing appellant that the "Board [had] determined that the May 1, 2023, letter should be considered as a motion seeking reconsideration of the Board's determination to deny any application for renewal of license that [appellant] may file at the end of the current licensure cycle, i.e., June 30, 2023."

On June 14, 2023, the Board heard oral argument on the motion for reconsideration. Approximately three weeks later, on July 7, 2023, the Board issued a final agency decision denying the motion for reconsideration, denying the request to transfer the matter to the OAL, and denying the request for a stay. In its written decision, the Board explained that it had "no discretion in this matter" because N.J.S.A. 45:1-15.9 "precludes the Board from renewing [appellant's] license to practice medicine and surgery in New Jersey, as his prior convictions for sexual assault and criminal sexual contact bar him from continued eligibility for licensure as a physician in New Jersey." The Board reasoned that "the legislation did not include any language specifying that it was

to apply only to individuals convicted of crimes after January 10, 2022," and that the legislative history also supported the interpretation that "the [L]egislature intended N.J.S.A. 45:1-15:9 to apply to crimes that occurred prior to its passage." Additionally, the Board found that it was not required to transfer the matter to the OAL because there were no contested material issues of fact.

Appellant then filed an emergent motion for a stay of his disqualification with us pending his appeal of the Board's decision. We denied that request for a stay. Appellant now appeals from the July 7, 2023 final agency decision by the Board.

II.

An appellate court's review of an administrative agency's final decision is limited. Seago v. Bd. of Trs., Tchrs.' Pension & Annuity Fund, 257 N.J. 381, 391 (2024). An agency's decision will not be reversed unless "(1) it was arbitrary, capricious, or unreasonable; (2) it violated express or implied legislative policies; (3) it offended the State or Federal Constitution; or (4) the findings on which it was based were not supported by substantial, credible evidence in the record." Univ. Cottage Club of Princeton N.J. Corp. v. N.J. Dep't of Env't Prot., 191 N.J. 38, 48 (2007) (citing In re Taylor, 158 N.J. 644, 656 (1999)). Moreover, courts generally "afford substantial deference to an

agency's interpretation of a statute that it is charged with enforcing." Ibid. (citing R & R Mktg., L.L.C. v. Brown-Forman Corp., 158 N.J. 170, 175 (1999)).

An appellate court, however, is not "bound by the agency's interpretation of a statute or its determination of a strictly legal issue." Ibid. (quoting In re Taylor, 158 N.J. at 658). So, "no deference is required when 'an agency's statutory interpretation is contrary to the statutory language, or if the agency's interpretation undermines the Legislature's intent.'" In re Proposed Constr. of Compressor Station, 476 N.J. Super. 556, 565 (App. Div. 2023) (quoting N.J. Tpk. Auth. v. Am. Fed'n of State, Cnty. & Mun. Emps., Council 73, 150 N.J. 331, 351 (1997)).

III.

On appeal, appellant contends that the Board erred because it applied N.J.S.A. 45:1-15.9 to him retroactively. In that regard, appellant argues that a retroactive application of the statute is (1) unconstitutional because it took away his property interest in his medical license without due process; (2) a manifest injustice because appellant had the right to rely on the Board's previous reinstatement of his license so long as he complied with the conditions attached to the reinstatement of his license; and (3) fundamentally unfair because it was

an arbitrary and unjust government action to decline to renew his medical license when he had already "paid his debt to society."

All of appellant's arguments are premised on the assertion that the Board applied N.J.S.A. 45:1-15.9 retroactively. That premise is incorrect. The Board did not revoke appellant's license or reverse its 2021 renewal of his license. Instead, the Board informed appellant that his license would not be renewed when it expired in June 2023. Consequently, the statutory interpretation issue presented to us is whether N.J.S.A. 45:1-15.9 applies to a conviction of a sexual crime that took place before January 10, 2022. The clear answer to that question is yes.

A. The 2022 Statute.

In interpreting a statute, a court's "aim is 'to effectuate the Legislature's intent.'" Sanjuan v. Sch. Dist. of W. N.Y., 256 N.J. 369, 378 (2024) (quoting W.S. v. Hildreth, 252 N.J. 506, 518 (2023)). "The best evidence of such intent 'is the statutory language,' read in accordance with its 'ordinary meaning and significance.'" Ibid. (quoting W.S., 252 N.J. at 518).

"Settled rules of statutory construction favor prospective rather than retroactive application of new legislation." Pisack v. B & C Towing, Inc., 240 N.J. 360, 370 (2020) (quoting James v. N.J. Mfrs. Ins. Co., 216 N.J. 552, 563

(2014)). "Our Supreme Court has consistently held that an amendment that is to take effect immediately is to be applied only prospectively." State v. Rosado, 475 N.J. Super. 266, 276 (App. Div. 2023). Nevertheless, statutes may and often do consider facts that exist before the statute is effective. When a statute does consider such "antecedent facts," it is not necessarily being applied retroactively. In re Frazier, 435 N.J. Super. 1, 8 (App. Div. 2014) (quoting United States v. Pfeifer, 371 F.3d 430, 436 (8th Cir. 2004)). Accordingly, we have explained that a "law is 'not retroactive simply because it "draws upon antecedent facts for its operation."'" Ibid. (quoting Pfeifer, 371 F.3d at 436).

The language of N.J.S.A. 45:1-15.9 is clear and unambiguous. It states that the Board cannot renew the license of a healthcare professional if the applicant "has been convicted of sexual assault, criminal sexual contact or lewdness." N.J.S.A. 45:1-15.9(a). Although the statute became effective on January 10, 2022, its language makes clear that a healthcare professional who has a prior conviction for an enumerated sexual crime cannot have his or her license renewed. Applying the statute in that manner is not applying it retroactively. Instead, the statute requires the Board to consider antecedent facts and apply those facts in evaluating all applications presented to it after January 10, 2022.

The Board correctly interpreted N.J.S.A. 45:1-15.9 when it determined that it could not renew appellant's medical license in June 2023. Appellant does not dispute that he pled guilty to sexual assault and four counts of criminal sexual contact in 2001. It is indisputable, therefore, that in 2023, appellant had "been convicted of sexual assault [and] criminal sexual contact" and was, therefore, ineligible for license renewal under N.J.S.A. 45:1-15.9. N.J.S.A. 45:1-15.9(a). In short, given the clear and unambiguous language of N.J.S.A. 45:1-15.9, the Board could not renew appellant's medical license in 2023.

The Board did not change any of its prior decisions allowing appellant to practice medicine subject to conditions before 2021. Moreover, the Board did not revoke appellant's medical license before it expired on June 30, 2023. Instead, the Board determined that it was not permitted to renew appellant's medical license when he had to reapply in June 2023. That decision was not a retroactive application of the statute; rather, the Board was applying the statute to appellant's anticipated application to renew his medical license in June 2023.

B. Appellant's Other Arguments.

Having rejected appellant's premise that the statute was applied retroactively, his other arguments concerning due process, manifest injustice,

and fundamental fairness all fail because they are dependent on the contention that N.J.S.A. 45:1-15.9 was applied to him retroactively.

1. Due Process.

Licenses to practice medicine, like other occupational licenses, are "in the nature of a property right" and are "'subject to reasonable regulation in the public interest.'" In re Polk, 90 N.J. 550, 562 (1982) (quoting B. Jeselsohn, Inc. v. Atlantic City, 70 N.J. 238, 242 (1976)). The Administrative Procedure Act (APA), N.J.S.A. 52:14B-1 to -31, provides that an agency shall not "revoke or refuse to renew any license unless it has first afforded the licensee an opportunity for hearing in conformity with the provisions of [the APA] applicable to contested cases." N.J.S.A. 52:14B-11. This requirement, however, does not apply "where the agency is required by any law to revoke, suspend or refuse to renew a license, as the case may be, without exercising any discretion in the matter, on the basis of a judgment of a court of competent jurisdiction." Ibid.

Here, appellant has received the process he was due. He was notified that the Board would not renew his license, and he had an opportunity to be heard on that decision. Appellant did not dispute that he had the disqualifying prior convictions. Instead, he sought to argue that the statute should not be applied

to him. N.J.S.A. 45:1-15.9 does not allow for the Board's discretion. It requires the Board to refuse to renew the licenses of healthcare professionals who have been convicted of certain crimes. It is undisputed that appellant had been convicted of two of the enumerated crimes. Therefore, appellant was not entitled to a contested hearing in the OAL because there were no disputed facts concerning the Board's refusal to renew his license.

2. Manifest Injustice.

Appellant argues that "[r]etroactive application to [appellant of N.J.S.A. 45:1-15.9] would be a manifest injustice." However, because the statute was not applied retroactively, the "manifest injustice" step of the retroactivity analysis is not reached. See Roik v. Roik, 477 N.J. Super. 556, 573 (App. Div. 2024) (explaining that a court must determine "'(1) whether the Legislature intended to give the statute retroactive application; and [if so] (2) whether retroactive application "will result in either an unconstitutional interference with vested rights or a manifest injustice"'" (alteration in original) (quoting Ardan v. Bd. of Rev., 444 N.J. Super. 576, 587 (App. Div. 2016))).

Appellant cites to several cases in support of this contention, all of which can be distinguished because they involved an analysis of whether to apply statutes or a regulation retroactively. See Nobrega v. Edison Glen Assocs., 167

N.J. 520 (2001) (evaluating an act precluding liability for non-disclosure of certain toxic waste sites and declining to apply it retroactively to bar the plaintiffs from suing the developer and seller of condominiums, where the non-disclosure occurred before the act went into effect); State Troopers Fraternal Ass'n of N.J., Inc. v. State, 149 N.J. 38 (1997) (evaluating a regulation prohibiting retroactive pay increases for state employees promulgated during negotiation of state troopers' collective negotiation agreement and, because of State Police's well-established prior practice of authorizing retroactive pay adjustments for troopers who resigned in good standing, declining to apply it retroactively to a group of state troopers who had been employed during part of the time covered by the agreement but had retired in good standing before the agreement's execution); In re G.H., 455 N.J. Super. 515 (App. Div. 2018) (evaluating an amendment that barred relief from lifetime sex offender registration for sex offenders convicted of certain offenses and declining to apply it retroactively to two sex offenders whose convictions occurred before the amendment went into effect).

3. Fundamental Fairness.

"The doctrine of fundamental fairness 'serves to protect citizens generally against unjust and arbitrary governmental action, and specifically against

governmental procedures that tend to operate arbitrarily.'" State v. Saavedra, 222 N.J. 39, 67 (2015) (emphasis omitted) (quoting Doe v. Poritz, 142 N.J. 1, 108 (1995)). Courts view the doctrine as a part of due process. Ibid. "The doctrine is applied 'sparingly' and only where the 'interests involved are especially compelling'; if a [party] would be subject 'to oppression, harassment, or egregious deprivation,' it is to be applied." Ibid. (quoting Doe, 142 N.J. at 108).

Appellant argues that retroactive application of the statute would violate the doctrine of fundamental fairness. As already discussed, N.J.S.A. 45:1-15.9 was not applied retroactively, and appellant was afforded adequate due process. The State may impose "reasonable regulation[s]" on medical licenses "in the public interest," Polk, 90 N.J. at 562 (quoting B. Jeselsohn, Inc., 70 N.J. at 242), and appellant has made no showing that the Board's refusal to renew his license constitutes an egregious deprivation outside of those bounds. Appellant's real complaint is with the statute itself; he would have preferred that the Legislature not make a prior conviction of a sexual crime a disqualification from practicing medicine. The Legislature, however, has spoken. Thus, application of the statute to appellant is not fundamentally unfair.

Affirmed.