STATE OF MICHIGAN

COURT OF APPEALS

DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES,

Plaintiff-Appellee,

V

GABRIEL SAGUN ORZAME, M.D.,

Defendant-Appellant.

UNPUBLISHED
November 30, 2001

No. 223676
Board of Medicine
LC No. 98-000346

Before: Fitzgerald, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Defendant appeals by right the Board of Medicine's revocation of defendant's license to practice medicine. Defendant's sole issues on appeal are four constitutional questions generally raised before yet unreviewable by the Board of Medicine. We affirm.

Defendant first claims that revocation of his license placed him in double jeopardy because revocation, together with his previous misdemeanor conviction, constituted multiple punishments. Constitutional questions are reviewed de novo. *Kuhn v Secretary of State*, 228 Mich App 319, 324; 579 NW2d 101 (1998). De novo is the proper standard because defendant is not disputing the agency's findings of fact. See *In the Matter of Estes*, 392 Mich 645, 649; 221 NW2d 322 (1974). Further, the administrative tribunal did not consider any constitutional issues, likely because it did not have jurisdiction over them. *Womack-Scott v Dep't of Corrections*, 246 Mich App 70, 81; 630 NW2d 650 (2001). We may review the board's ultimate legal decision revoking defendant's license to determine whether it was constitutionally authorized by law and, though supported by substantial evidence, whether it is based on a substantial and material error of law. Const 1963, art 6, § 28; MCL 24.306(1)(f); *Adrian School Dist v Michigan Public School Employees' Retirement System*, 458 Mich 326, 332; 582 NW2d 767 (1998).

Federal double jeopardy protection ensures that one punishment be fully credited in imposing a second punishment for the same offense. US Const, Am V; *People v Whiteside*, 437 Mich 188, 198-199; 468 NW2d 504 (1991), cert den 502 US 889; 112 S Ct 249; 116 L Ed 2d 204 (1991). In general, administering criminal and civil penalties for the same act is not a violation, unless the civil penalties are disproportionate to the offense when added to the criminal sanctions. *People v Hellis*, 211 Mich App 634, 640, 644 (O'Connell, J.), 651 (Jansen, J.), 658 (Holbrook, Jr., P.J.); 536 NW2d 587 (1995). However, an administrative action may be violative

of double jeopardy if it is equivalent to a criminal proceeding because the penalty or forfeiture is so punitive in purpose or effect that it is rendered a criminal punishment. *People v Duranseau*, 221 Mich App 204, 206-207; 561 NW2d 111 (1997). This is determined by ascertaining the Legislature's intent. *Id*. at 207.

We have held that administrative license revocation proceedings are not criminal, and the purpose of license revocation is not to render punishment, comporting with the double jeopardy prohibition. *Thangavelu v Dep't of Licensing and Regulation*, 149 Mich App 546, 555-556; 386 NW2d 584 (1986). Rather, the purpose is to maintain sound, professional standards of conduct to protect the public and the standing of the medical profession in the eye of the public. *Id*.; see, also, *Consumer & Industry Services v Greenberg*, 231 Mich App 466, 470-471; 586 NW2d 560 (1998). The Board of Medicine's decision revoking defendant's license for his misdemeanor falsification of a medical record conviction is clearly mandated by the Public Health Code, evidencing the Legislature's intent. MCL 750.492a; MCL 333.16221; MCL 333.16226; *Duranseau*, *supra* at 207. Therefore, because the board's decision was authorized by law and was not a legal error, defendant's double jeopardy argument is without merit. MCL 24.306(1)(f); *Adrian School Dist*, *supra* at 332.

Second, defendant argues that license revocation is an unconstitutionally cruel or unusual punishment. US Const, Am VIII; Const 1963, art 1, § 16. Defendant's argument and case law supporting application of Michigan's more protective cruel "or" unusual punishment doctrine, in addition to the federal standard, allows this Court to look to state case law to expand Eighth Amendment protection for defendant. *Carlton v Dep't of Corrections*, 215 Mich App 490, 505-506; 546 NW2d 671 (1996). Similar to part of the double jeopardy analysis, whether a civil sanction is a punishment is the threshold question here. See *People v Chapman*, 301 Mich 584, 608; 4 NW2d 18 (1942); *Smith v Wayne Probate Judge*, 231 Mich 409, 416; 204 NW 140 (1925); see also, e.g., *In the Matter of Estes*, *supra* at 645. As a mechanism for protecting the public from the licensee's failings, this Court has already concluded that the Legislature intended as nonpunitive the general civil sanction of license revocation following a criminal conviction for the same conduct. *Duranseau*, *supra* at 206-207; see, also, *Thangavelu*, *supra* at 555-556. Thus, the cruel or unusual punishment inquiry ends here, even under state case law expanding cruel or unusual punishment protection to state defendants under the principle of proportionate punishments. MCL 333.16221; MCL 750.492a(1)(b); *Duranseau*, *supra* at 207; *Greenberg*, *supra* at 470-471.

Third, defendant advances a primarily Fourteenth Amendment procedural due process argument, essentially contending that the license revocation statute is unconstitutional as applied to him because it is disproportionate to the seriousness of his misdemeanor offense conviction. US Const, Am XIV. The Fourteenth Amendment provides that no person may be deprived of life, liberty, or property without due process of law. *St Louis v MUSTFA Policy Bd*, 215 Mich App 69, 74; 544 NW2d 705 (1996). Normally, Michigan's due process clause is construed no more broadly than the federal guarantee. *Syntex Laboratories v Dep't of Treasury*, 233 Mich App 286, 292; 590 NW2d 612 (1998). In general, procedural due process must be afforded to any adjudication of important rights. *Dobrzenski v Dobrzenski*, 208 Mich App 514, 515; 528 NW2d 827 (1995). The threshold consideration concerns whether the state has deprived a person of a life, liberty, or property interest to which the person has a legitimate entitlement. *St Louis*, *supra* at 74-75. A person's means of livelihood is commonly considered a protectable

property interest requiring procedural due process. *Mollett v City of Taylor*, 197 Mich App 328, 343; 494 NW2d 832 (1992). The basic protections of procedural due process apply to medical license revocation proceedings. *Milford v People's Community Hospital Authority*, 380 Mich 49, 56-63; 155 NW2d 835 (1968).

Defendant's relatively novel due process claim is that the statutory scheme unfairly mandates license revocation for all record falsification offenses, even reckless (unintentional) misdemeanors.[1] Defendant points out that ostensibly more serious offenses including murder and other offenses of moral turpitude are subjected to a disciplinary scheme affording the board discretion to administer a penalty less than license revocation. MCL 333.16221; MCL 333.16226. This claim requires us to determine whether the penalty is irrational in light of the scheme. *Hudson v United States*, 522 US 93, 103-104; 118 S Ct 488; 139 L Ed 2d 450 (1997); *Alvarez v Straub*, 64 F Supp 2d 686, 698 (ED Mich, 1999). Defendant acknowledges that the inquiry is commonly known as the rational basis test for legislation founded in the police power, including the one at issue under the Public Health Code. *Katt v Ins Bureau*, 200 Mich App 648, 652-653; 505 NW2d 37 (1993); *Hecht v Niles Twp*, 173 Mich App 453, 460; 434 NW2d 156 (1988).

In fact, protection of the public affords the reasonable basis required for license revocation, which is rationally related to that legitimate goal. *Greenberg, supra* at 470-471; *Thangavelu, supra* at 555-556.

> [A]s a simple administrative matter the legislature could, and indeed had to, choose some time at which persons serving life sentences become eligible for parole. That this scheme may at times result in the anomalous result of a person being convicted of a more serious crime being eligible for parole sooner than someone convicted of a less serious crime does not render the scheme irrational. [*Alvarez, supra* at 698.]

Defendant's fourth and final claim, equal protection, Const 1963, art 1, § 2; US Const Am XIV, fails for similar reasons. First, defendant's "as-applied" equal protection claim requires only that similarly situated classes be treated alike. *Crego v Coleman*, 463 Mich 248, 261-262, 269; 615 NW2d 218 (2000), cert den 531 US 1074; 121 S Ct 767; 148 LEd 2d 667 (2001). We find that defendant's class of MCL 750.492a misdemeanor criminals, compared to other felony criminals, are not sufficiently similarly situated to invoke equal protection. *Crego, supra* at 264, 273, 277. Dishonesty in medical record keeping is a discrete concern of the Legislature demonstrated in the presumptively valid statute's language, and the policy discouraging it is distinct from the one underlying other crimes. MCL 750.492a; *Vargo v Sauer*, 457 Mich 49, 60-61; 576 NW2d 656 (1998); *Greenberg, supra* at 470-471. Further, promotion of accurate record keeping, both for the individual patient's welfare and the public's protection, is a reasonable basis for revoking a medical license. Revocation, in turn, is rationally related to

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[1] Defendant suggests that he never received a proper hearing in either the administrative matter or for his nolo contendere plea in the criminal matter. The record belies this assertion on both counts, and only the administrative matter is before this Court. *Dow v State*, 396 Mich 192, 205; 240 NW2d 450 (1976) (due process requires a hearing).

the accuracy goal. *Greenberg*, *supra* at 470-471; *Thangavelu*, *supra* at 555-556. Therefore, the disparity in discipline afforded to the two classes is not irrational. *Alvarez*, *supra* at 698. Thus, the Board of Medicine's decision was authorized by law and not based on a substantial and material error of law under an irrational statute. MCL 24.306(1)(f); *Thangavelu*, *supra* at 555-556; *Alvarez*, *supra* at 698.

We affirm.

/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra
/s/ Jane E. Markey