

STATE OF MICHIGAN
COURT OF APPEALS

BUREAU OF HEALTH PROFESSIONS,

Petitioner-Appellee,

v

JAMES A. CARIS,

Respondent-Appellant.

UNPUBLISHED

December 11, 2007

No. 273516

Department of Community
Health, Bureau of Health
Professions

LC No. 2005-098291

Before: Davis, P.J., and Murphy and Servitto, JJ.

PER CURIAM.

Respondent appeals by leave granted the final order of the Michigan Board of Social Work Disciplinary Subcommittee (the disciplinary subcommittee) limiting his social work licenses for six months and placing him on concurrent probation based on an administrative finding that he violated MCL 333.16221(a) and (b)(i). We reverse.

This disciplinary action arose as a consequence of a prior disciplinary action involving another registered social worker, referred to in the administrative proceedings as “AB.” On March 11, 2003, the disciplinary subcommittee entered a consent order and stipulation suspending AB’s social worker registration. Pursuant to the version of MCL 333.18503 then in effect,¹ AB was therefore prohibited from representing herself as a registered social worker. AB became employed by the Lutheran Child and Family Service of Michigan (LCFSM) as a “residential social worker” while the complaint against her was pending. AB and LCFSM

¹ At the time periods relevant to this case, and prior to the Legislature’s enactment of 2004 PA 61, MCL 333.18503 provided as follows:

An individual shall not represent that he or she is a certified social worker, social worker, or social work technician or use a title including “certified social worker,” “social worker,” “social work technician,” or an abbreviation of those terms or the letters “c.s.w.,” “s.w.,” or “s.w.t” or similar words which would indicate that he or she is registered under this article unless the individual is registered in that capacity under this article.

discussed the terms of the consent order and stipulation after it was entered, and they concluded that she was permitted to continue her employment.

On April 21, 2003, respondent was hired by LCFSM, where, among other duties, he was AB's supervisor. AB advised respondent that her social work license had been suspended. Respondent did not familiarize himself with the details of the consent order beyond the fact of AB's license suspension. He instead assumed that, because LCFSM knew about the suspension, it was legal for AB to continue working under the supervision of registered social workers. AB applied for reinstatement of her license, and respondent wrote a letter in support. The Michigan Board of Social Work (the Board) denied reinstatement. During the administrative hearing following the denial of the reinstatement application, respondent testified that AB continued to work at LCFSM and introduce herself as a residential social worker. Following the hearing, petitioner filed an administrative complaint with the disciplinary subcommittee, alleging that respondent, as the suspended subordinate's supervisor, violated MCL 333.16221(a) and (b)(i) by allowing the individual to hold herself out as a residential social worker in violation of MCL 333.18503, despite knowing that her social worker registration was suspended.

Following an administrative hearing, the hearing referee submitted a proposed decision recommending a finding that respondent did not violate MCL 333.16221. The referee made findings of fact that, among other things: respondent did not know the precise terms of the consent order; AB's position title was "residential social worker," a position that was generally filled by LCFSM by individuals with Master's degrees in social work, but was sometimes filled by individuals with Master's degrees in other fields; and that AB's business cards only said "residential social worker." The referee made findings of law that it was unclear what respondent was actually charged with violating, but that he could not have violated a consent order to which he had not been named as a party, that respondent fully carried out his supervisory responsibilities as set forth in MCL 333.16109(2), and that respondent could not have aided and abetted or failed to report a violation of social work laws where he was unaware of any illegality.

After reviewing the record, the disciplinary subcommittee accepted the hearing referee's findings of fact but rejected his conclusions of law. The disciplinary subcommittee greatly emphasized the fact that respondent did not know the terms of the consent order and had assumed that LCFSM was aware of AB's status. The disciplinary subcommittee concluded, without citation to any authority, that respondent was required, as AB's supervisor, to review the complete and exact terms of the consent order, determine how those terms would affect AB's and his own employment, and then ensure that the terms were fully complied with. On that basis, the disciplinary subcommittee found that respondent violated MCL 333.16221(a) and (b)(i) by allowing the subordinate to represent herself as a social worker. Pursuant to MCL 333.16226, the disciplinary subcommittee sanctioned respondent by limiting his social work licenses for six months, during which time he could only work under the general supervision of a licensed social worker. The disciplinary subcommittee also placed respondent on concurrent probation and ordered him to successfully complete a continuing education course in the area of supervision. This appeal followed.

Our review of petitioner's disciplinary subcommittee's order is limited to the standard set forth in Const 1963, art 6, § 28, which provides in relevant part as follows:

All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record.

See *Dep't of Community Health v Risch*, 274 Mich App 365, 371; 733 NW2d 403 (2007).

Although respondent presents numerous challenges to the factual bases of the disciplinary subcommittee's order, we believe they are peripheral to the real issue. It is undisputed, and in any event clearly established, that: (1) respondent knew that AB's social work license had been suspended pursuant to the consent order, (2) AB was designated as a social worker of some sort to the public, and (3) respondent did not know the particular details of the consent order, but believed that LCFSM had resolved any legal impediments to AB's continued employment in her current role.² The disciplinary subcommittee's order was based entirely on respondent's admitted failure to familiarize himself with the details of AB's consent order and "determine how those terms affected his subordinate's employment and his role as supervisor, and ensure that in respect to her employment [AB] complied with the terms of the Consent Order." It was on that basis that the disciplinary subcommittee found that respondent had been negligent and had failed to conform to the minimal standards of acceptable and prevailing practice, contrary to MCL 333.16221(a) and (b)(i). Respondent challenges the disciplinary subcommittee's imposition of such a requirement.

Resolving this issue involves a question of statutory interpretation, which is a question of law reviewed de novo. *Griffith v State Farm Mut Automobile Ins Co*, 472 Mich 521, 525-526; 697 NW2d 895 (2005). The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature, which is presumed to have intended the meaning it plainly expressed. *Linsell v Applied Handling, Inc*, 266 Mich App 1, 15; 697 NW2d 913 (2005). If statutory language is clear and unambiguous, a court is required to apply the statute as written. *Id.*

MCL 333.16221(a) and (b)(i) provide as follows:

The department may investigate activities related to the practice of a health profession by a licensee, a registrant, or an applicant for licensure or registration. The department may hold hearings, administer oaths, and order relevant testimony to be taken and shall report its findings to the appropriate

² It is not disputed that the law at the relevant times did not prohibit any of AB's actual practice of social work; she was only prohibited from *holding herself out* as a licensed social worker, which petitioner itself characterized below as a "tricky distinction." It is also undisputed that AB held a master's degree in social work.

disciplinary subcommittee. The disciplinary subcommittee shall proceed under section 16226 if it finds that 1 or more of the following grounds exist:

(a) A violation of general duty, consisting of negligence or failure to exercise due care, including negligent delegation to or supervision of employees or other individuals, whether or not injury results, or any conduct, practice, or condition that impairs, or may impair, the ability to safely and skillfully practice the health profession.

(b) Personal disqualifications, consisting of 1 or more of the following:

(i) Incompetence. [MCL 333.16221(a)-(b)(i).]

It is clear from the disciplinary subcommittee's opinion that its findings were based on respondent's supervisory duties. "Incompetence" is defined by statute as "a departure from, or failure to conform to, minimal standards of acceptable and prevailing practice for a health profession, whether or not actual injury to an individual occurs." MCL 333.16106(1). "Supervision" is defined in MCL 333.16109(2), but on its face that section only applies to licensed health professionals; social workers were "registered" rather than "licensed" prior to the enactment of 2004 PA 61, so that definition does not apply. We therefore consult a dictionary. See *Griffith, supra* at 526. According to *Random House Webster's College Dictionary* (2001), a "supervisor" is "a person who supervises workers or the work done by others; superintendent." To "supervise" means "to watch over and direct (a process, work, workers, etc); oversee; superintend."

Thus, the disciplinary subcommittee's findings are that respondent's failure to familiarize himself with the consent order was below the minimal standards of acceptable and prevailing practice, or that failure constituted negligent oversight of AB or AB's work. There are two broad, general legal principles that trouble us about this conclusion: negligence requires that some identifiable duty was breached, and falling below a standard also requires the standard to be identified. The disciplinary subcommittee impliedly found that a duty and a standard exist and obligated respondent to conduct independent research into a known potential impediment for one of respondent's employees, notwithstanding the critical fact that his *own* supervisors had apparently already successfully done so and had apparently resolved any problems the impediment had created.

We generally agree that effective supervision probably requires awareness of employees' limitations on their abilities to perform their jobs. We also generally agree that a supervisor who is made aware of a possible problem probably should follow up on that possibility and, if necessary, resolve it. We finally agree that it is inherently neither "necessary or desirable" that a statute proscribing professional misconduct "individually list all specific instances of negligence encompassed by this standard." *Sillery v Bd of Medicine*, 145 Mich App 681, 687; 378 NW2d 570 (1985). Here, however, respondent was not only made aware of a possible problem, he was presented with a problem that had apparently already been resolved by his own superiors. The disciplinary subcommittee did not articulate any source or basis for requiring respondent to second-guess them and take steps to correct a situation that appeared already to have been corrected. Under the circumstances, the disciplinary subcommittee erred as a matter of law in finding respondent's undisputed acts to have been negligent or incompetent supervision under MCL 333.16221(a) and (b)(i).

Reversed.

/s/ Alton T. Davis

/s/ William B. Murphy

/s/ Deborah A. Servitto