

FILED: August 3, 2011

IN THE COURT OF APPEALS OF THE STATE OF OREGON

RALPH LEWIS READ, MD,
Petitioner,

v.

OREGON MEDICAL BOARD,
Respondent.

Oregon Medical Board

A144783

Submitted on March 04, 2011.

George W. Kelly filed the briefs for petitioner.

John R. Kroger, Attorney General, Mary H. Williams, Solicitor General, and Jamie K. Contreras, Assistant Attorney General, filed the brief for respondent.

Before Schuman, Presiding Judge, and Wollheim, Judge, and Nakamoto, Judge.

SCHUMAN, P. J.

Civil penalty reversed and remanded; otherwise affirmed.

1 SCHUMAN, P. J.

2 The Oregon Medical Board (board) concluded that petitioner engaged in
3 unprofessional conduct and willfully disobeyed a board order, and, as a consequence, it
4 revoked his license to practice medicine, fined him \$10,000, and ordered him to pay the
5 costs of the disciplinary proceedings--\$14,599.05. Petitioner seeks judicial review,
6 arguing, first, that the term "unprofessional conduct" is not adequately defined by statute
7 and that, as a result, the board engaged in *ad hoc* adjudication instead of applying precise
8 rules; second, that he did not willfully disobey a board order because the order in
9 question was impossible to obey; and third, that the board abused its discretion in fining
10 him \$10,000 plus costs. We remand for reconsideration of the \$10,000 fine and
11 otherwise affirm.

12 The following facts from the order under review are not disputed.
13 Petitioner is a diagnostic radiologist who received his license to practice medicine in
14 Oregon in 1999. The administrative rules of the Oregon Medical Board require that a
15 person who practices medicine in the State of Oregon register with the board every two
16 years and pay a biennial "active status" registration fee. OAR 857-008-0015; OAR 847-
17 008-0040. In November 2007, petitioner filed a registration form requesting renewal of
18 his active status. The form required the applicant to provide information about his or her
19 practice over the preceding several years and disclose any arrests or convictions.
20 Petitioner disclosed that he had been unemployed since 2003 and had ceased the active
21 practice of medicine in his specialty. He also disclosed that he had been arrested in

1 August 2006 and charged with disorderly conduct, but that the charges had been
2 dismissed with prejudice.

3 Subsequently, petitioner wrote letters to the board to further explain his
4 activity since 2003. Petitioner explained that he became unemployed in 2003 when
5 Woodland Park Hospital closed. He explained that, although he was not currently
6 involved in direct patient care and was not working for a hospital, he was involved in
7 consultation regarding radiology, medicine, and quality control. He also explained that
8 the dismissed disorderly conduct charge had been precipitated by a citizen's complaint
9 that he had been seen abusing his dog, an accusation that he denied.

10 In another letter, petitioner further explained his need for licensure:

11 "I have been doing work that I consider 'practice of medicine.' My
12 'current' medical license is a prime requirement for consultation, second
13 opinions, and radiology quality control evaluation that I have been involved
14 in. I do not issue reports of individual radiology exams for the patients'
15 charts, but I do review exams and their reports. Current licensure is
16 important to anyone obtaining second opinions, or having medical care
17 evaluated for quality concerns. I choose to not provide DIRECT patient
18 care to individuals for a variety of reasons which include COST,
19 INSURANCE, and scheduling. Also, I encountered rather pervasive age
20 discrimination, which I do not expect you or anyone else to be able to
21 change. That is not your concern, is it? I believe there are many doctors
22 who are doing administrative type work and NOT providing direct patient
23 care. Do you hassle all of them too?"

24 If a person licensed to practice medicine ceases to practice for a period of
25 12 or more consecutive months, the board in its discretion may require the person to
26 prove to its satisfaction that the licensee has maintained competence. ORS 677.175(2);
27 OAR 847-008-0040(5). When a physician has been out of practice for a number of years,

1 it is the board's practice to change the status of the license to "inactive."

2 The board's Administrative Affairs Committee examined petitioner's
3 application and recommended that his license be changed to inactive status, and the board
4 ratified the recommendation. The board placed petitioner's license in inactive status and
5 informed him that, if he wanted to return his license to active status, he would have to
6 undergo an evaluation from either the Center for Personalized Education for Physicians
7 (CPEP) in Colorado, or the Physician Assessment and Clinical Education Program
8 (PACE); that the evaluation should include an assessment of petitioner's medical
9 knowledge and clinical skills; and that it must include a psychiatric evaluation.

10 Pursuant to the board's procedures, petitioner requested an investigative
11 interview with the board's Investigation Committee in order to challenge the decision.
12 Petitioner received notice of the interview:

13 "Pursuant to ORS 677.320(5),^[1] the current investigative summary
14 as provided by the case investigator follows: You have requested an
15 interview with the Board's Investigation Committee related to your request
16 for a review and reversal of having your license placed in inactive status.

17 "Additionally, concerns have been raised that you have been
18 unemployed and not practicing medicine since July, 2003, per your most
19 recent license renewal form, and you are seeking an Active license status.
20 The Board also has concerns related to your 2006 arrest by the police that
21 was precipitated by a citizen's report that you were observed abusing your
22 dog.

23 "Please come to the interview prepared to discuss the concerns listed
24 above. Please bring any documents, including billing records and patient

¹ ORS 677.320 provides that, "[u]pon the complaint of any citizen of this state, or upon its own initiative, the Oregon Medical Board may investigate any alleged violation of this chapter."

1 charts, if applicable, regarding the concerns listed above that will aid you in
2 your response to Committee questions during your interview. In addition to
3 questions regarding the concerns listed above, please be prepared to answer
4 questions regarding your education and experience as well as your current
5 practice situation. Also complete the enclosed form listing your last three
6 years of medical education; attach additional pages as necessary and bring
7 the form and any attachments with you to the interview.

8 "Legally you are advised that under the provisions of ORS
9 677.190(23) [2008],^[2] the Board has authority to discipline a licensee for
10 refusing an invitation for an interview before the Investigation Committee."

11 The interview occurred on June 5, 2008. Committee members asked petitioner questions
12 about his qualifications to practice medicine and the extent to which he has maintained
13 his medical skills. Petitioner's answers were evasive or nonresponsive, and they were
14 also combative. Petitioner explained that he had asked to meet with the board only in
15 order to exhaust his administrative remedies:

16 "I need the meeting because I need to exhaust my administrative
17 appeals. I don't expect any of you to act any different from the people who
18 made this decision in the first place. Why would I expect that? You're
19 used to dealing with drunks, drug addicts, with people who are abusing
20 their patients, and I don't expect to get treated better than they get treated,
21 and I'm not going to. But I need to exhaust my administrative appeal, and
22 you need to do whatever you do. But I'm not going to answer questions and
23 have you come up with something that finally justified a decision that's
24 already been made."

25 Petitioner declined to give the committee members any details of his practice since 2003
26 because, in his judgment, the committee already had all of the information it needed and
27 also because other similarly situated licensees were not required to do so.

28 Subsequently, the board informed petitioner that his medical license would

² The statute's subsections have since been renumbered, and its current number is ORS 677.190(22).

1 remain inactive due to his failure to provide the board with the additional information
2 requested. Petitioner again requested that his license be changed to active status, and also
3 requested administrative review of the board's decision. In response, the board issued an
4 "Order for Evaluation" to petitioner requiring that within 90 days he successfully
5 complete an evaluation by CPEP, including a psychiatric evaluation.³ The board further
6 advised petitioner that his failure to comply with the order would constitute a violation of
7 ORS 677.190(18) (2008)⁴ and could result in disciplinary action by the board.

³ ORS 677.420 provides:

"(1) Notwithstanding any other provisions of this chapter, the Oregon Medical Board may at any time direct and order a mental, physical or medical competency examination or any combination thereof, and make such investigation, including the taking of depositions or otherwise in order to fully inform itself with respect to the performance or conduct of a licensee.

"(2) If the board has reasonable cause to believe that any licensee is or may be unable to practice medicine or podiatry with reasonable skill and safety to patients, the board shall cause a competency examination of such licensee for purposes of determining the fitness of the licensee to practice medicine or podiatry with reasonable skill and safety to patients.

"(3) Any licensee by practicing or by filing a registration to practice medicine or podiatry shall be deemed to have given consent to submit to mental or physical examination when so directed by the board and, further, to have waived all objection to the admissibility of information derived from such mental or physical or medical competency examination on the grounds of privileged communication.

"(4) The board may request any medical organization to assist the board in preparing for or conducting any medical competency examination that the board may consider appropriate."

⁴ The current number is ORS 677.190(17).

1 Petitioner sent an email to CPEP which might best be described as a semi-
2 coherent rant.⁵ CPEP did not respond to petitioner's email. Petitioner did not undergo an

⁵ The email that petitioner sent to CPEP read, in part:

"I have been ORDERED by the Oregon Board of Medical Examiners, to schedule 'evaluation' at your facility, although I would prefer NOT to travel to Denver, if that is possible. The Board has not really told me anything about why they want evaluation or WHAT evaluation they want (except that it includes psychiatric evaluation--I assume that is because I have not been very toady to their various machinations which have delayed the renewal of my medical license.) I believe this 'evaluation' is a way to punish me, not really an evaluation. And I am totally certain that there is no way to evaluate anyone and be certain they would be qualified to practice medicine. But it might be a good way to generate a lot of reasons to NOT let someone practice medicine. I assume that is what you do, but would be interested in hearing the weasel words you use to describe it. Since I have no idea how long your evaluation takes, or when it can be done, I would appreciate any information you can give me. Also there qualifications of your evaluators? That might be a great job for me now that I am not licensed to practice medicine, and probably will not be (based on the disingenuous attitude of the various Oregon Medical Board members so far). IF they have mentioned in any communication that I 'refused' to answer questions, I would point out that they almost certainly did not mention that when I asked to read the question, they refused to let me read them. So I did not answer questions that they did not ask me. That is their idea of REFUSAL! And cost. What amount of 'fine' is in order. Or is a sliding scale? Slides up until it is so unreasonable that I will choose to not pay it? The 'problem' I have is that I have been unemployed. Apparently, without any legal reason, the Board is worried because of this. I did offer to help 'out' any employers who are discriminating on basis of age (but the Board was not worried about doctors violating this Federal law, only about the idea that I might be 'unsafe.') and there have been no complaints against me. For obvious reasons, there is nothing to complain about. Maybe they will tell YOU what they are really doing, I would appreciate knowing for myself, as I suspect there IS an agenda, but it is illegal so they can't talk about it? By the way: I noted that you HOME page seems to be 'poorly designed'--despite the ad for the design firm. * * * By 'poorly designed' I mean that * * * the text letters in the main part of the page are TIGHT against the left edge--look at the page and you will see that is simply a matter of adding another <TD> and putting a space or two

1 evaluation at CPEP.

2 The board issued a Complaint and Notice of Proposed Disciplinary Action
3 to petitioner pursuant to ORS 677.205 for violations of the Medical Practice Act,
4 specifically ORS 677.190(1)(a) ("unprofessional or dishonorable conduct"),⁶ and ORS
5 677.190(18)(2008) (willful violation of a board order). The order advised petitioner that
6 he was entitled to a hearing and that

7 "[f]ailure to request a hearing or failure to appear at any hearing scheduled
8 by the Board will constitute waiver of the right to a contested case hearing
9 and will result in a default order by the Board, including assessment of such
10 penalty and costs as the Board deems appropriate under ORS 677.205."

11 Petitioner requested a hearing. He also voluntarily surrendered his medical license to the
12 board.

13 The hearing was presided over by an Administrative Law Judge (ALJ), who
14 issued a proposed order concluding that petitioner's failure to answer the board's

in it. I am surprised to see a page like that? [I]t suggests that you are not looking at your own website very much, so I thought you might appreciate the help."

⁶ ORS 677.188(4) defines "unprofessional or dishonorable conduct":

"Unprofessional or dishonorable conduct' means conduct unbecoming a person licensed to practice medicine or podiatry, or detrimental to the best interests of the public, and includes:

"(a) Any conduct or practice contrary to recognized standards of ethics of the medical or podiatric profession or any conduct or practice which does or might constitute a danger to the health or safety of a patient or the public or any conduct, practice or condition which does or might impair a physician's or podiatric physician and surgeon's ability safely and skillfully to practice medicine or podiatry[.]"

1 questions at the June 5 hearing amounted to unprofessional or dishonorable conduct; that
2 petitioner's involvement in the alleged dog abuse did not involve unprofessional or
3 dishonorable conduct; and that petitioner did not willfully disobey the board's order to
4 obtain a psychiatric evaluation at CPEP because it would have been impossible for him to
5 do so due to the fact that CPEP did not perform such evaluations. Petitioner filed
6 extensive exceptions to the proposed order. The board itself then reviewed the
7 exceptions and issued a final order in which it made the following findings concerning
8 petitioner's credibility:

9 "[Petitioner] initially testified that he underwent an evaluation by
10 [CPEP], but later admitted that he did not pay money to CPEP for an
11 evaluation, he did not travel to Colorado to meet with anyone from CPEP,
12 he did not go inside the CPEP office or facility, and he did not get an
13 evaluation. A witness false in one part of his testimony may be distrusted
14 in others. *See* ORS 10.095.

15 "In addition, throughout the hearing, [petitioner] engaged in word
16 repartee, his answers to questions posed were evasive and non-responsive,
17 and he made gratuitous self-serving comments. Accordingly, the ALJ
18 found that the testimony provided by [petitioner] was not credible and that
19 she would not rely upon his testimony when it contradicts evidence
20 presented by the Board. The Board concurs with this credibility finding by
21 the ALJ."

22 The board agreed with the ALJ that petitioner's refusal to answer questions posed to him
23 by the investigation committee constituted a violation of ORS 677.190(1)(a), prohibiting
24 "unprofessional or dishonorable conduct," and that no such conduct was involved in the
25 alleged dog abuse incident. However, the board disagreed with the ALJ regarding the
26 refusal to obey a board order by failing to undergo an evaluation by CPEP; the board
27 concluded that petitioner had willfully violated ORS 677.190(18) (2008) ("failing to

1 comply with a board request pursuant to ORS 677.320"). The board ordered petitioner's
2 license revoked, imposed a penalty of \$10,000, and assessed the costs of the disciplinary
3 proceeding. Petitioner seeks judicial review.

4 In his first assignment of error, petitioner contests the board's determination
5 that he engaged in "unprofessional or dishonorable conduct." His argument, as we
6 understand it, has three interrelated parts. First, he contends that the terms
7 "unprofessional" and "dishonorable" are so vague that they do not convey any
8 ascertainable meaning to the board's licensees. Second, he contends that, no matter what
9 "unprofessional" or "dishonorable" might mean, the conduct for which he was cited--
10 refusing to answer questions at the Investigative Committee meeting--does not fit the
11 definition because he was "at all times polite [and] consistently demonstrated his
12 willingness to engage the board in a dialog." Third, he argues that, under *Megdal v.*
13 *Board of Dental Examiners*, 288 Or 293, 315, 605 P2d 273 (1980), when a statute uses a
14 general term such as "unprofessional conduct," an agency cannot impose a sanction on a
15 licensee for such conduct except according to rules that the agency has promulgated.

16 ORAP 5.45(1) provides, "No matter claimed as error will be considered on
17 appeal unless the claimed error was preserved in the lower court[.]" That rule applies as
18 well to judicial review of agency action. [*Thomas Creek Lumber v. Board of Forestry*](#),
19 188 Or App 10, 30, 69 P3d 1238 (2003). None of petitioner's claims of error was
20 preserved for review. In the "Preservation of Error" section of his brief, he cites the
21 following statement from the proceedings below as his preservation of this issue:

1 "[At the June 5 interview,] [t]here was no follow-up to any of these
2 questions, and never an ORDER to answer any question * * *. At no time
3 was the licensee informed that there would be legal action against him if he
4 did not come up with some other answer than the one he gave."

5 That statement, he maintains on judicial review,

6 "did make plain to the Board that he objected to the revocation of his
7 license, he objected to the Board finding his June 5 behavior to be
8 unprofessional, and he complained of the Board's failure to give him
9 advance notice that his actions on June 5 provided an independent basis for
10 the revocation of his license."

11 We disagree. To preserve a claim of error for review, petitioner had to provide the
12 tribunal below with "an explanation of [his] objection that is specific enough to ensure
13 that the court can identify its alleged error with enough clarity to permit it to consider and
14 correct the error immediately, if correction is warranted." [State v. Wyatt](#), 331 Or 335,
15 343, 15 P3d 22 (2000). Petitioner's cited statement below does not come close to meeting
16 that standard. Nor does the fact that petitioner appeared without an attorney relax the
17 preservation requirement. [State v. Morrow](#), 192 Or App 441, 86 P3d 70, *rev den*, 337 Or
18 282 (2004).

19 Recognizing the tenuousness of his preservation argument, petitioner
20 argues that the board's error is apparent on the face of the record and therefore subject to
21 our review even if not preserved. ORAP 5.45(1). Again, we disagree. In light of the
22 elaborated definition of "unprofessional" and "dishonorable" conduct in ORS 677.188(4),
23 it is far from plain that the terms are too vague to comprehend. Regarding petitioner's
24 claim that his conduct was not unprofessional or dishonorable because he was at all times
25 polite to the Investigative Committee, there is a contrary finding of fact and it is

1 supported by evidence in superabundance. And regarding his claim that *Megdal* plainly
2 compels reversal, suffice it to say that that case compels an agency to promulgate rules
3 defining delegative terms, and the agency has, in fact, done so. *See* OAR 847-010-0073.
4 The fact that petitioner does not believe that the rules are specific enough is not an
5 argument under *Megdal* but an argument that the rules, like the statute they elaborate, are
6 too vague--an argument that is as un-apparent with respect to the rules as it is with
7 respect to the statute. *See McKay v. Board of Medical Examiners*, 100 Or App 685, 689,
8 788 P2d 476 (1990) ("unprofessional conduct" for physician is fully defined by statute
9 and does not need to be interpreted by rule before being applied in an individual
10 disciplinary proceeding); *Spray v. Bd. of Medical Examiners*, 50 Or App 311, 624 P2d
11 125, *affirmed as modified*, 51 Or App 773, 627 P2d 25, *rev den*, 291 Or 117 (1981)
12 (statutory definition of "unprofessional and dishonorable conduct" "sets a standard that
13 can only be determined on an individual case basis"). We therefore decline to consider
14 petitioner's first assignment of error.

15 In his second assignment of error, petitioner challenges the board's
16 conclusion that he violated the order requiring him to have a psychiatric evaluation at
17 CPEP. Compliance was not possible, he maintains, because CPEP is not an organization
18 that conducts psychiatric evaluations, and one cannot willfully fail to comply with an
19 order if compliance is impossible. We reject that argument.

20 The board's "Order for Evaluation" informed petitioner that he had to
21 "successfully complete a comprehensive evaluation at the Center for Personalized

1 Education for Physicians (CPEP) in Colorado. This evaluation shall include a psychiatric
2 evaluation." In response, petitioner consulted CPEP's website, which contained the
3 following pertinent information:

4 "The Physician Assessment does not address psychiatric or
5 substance abuse issues, ethical or fraudulent behavior, and/or boundary or
6 behavior issues. If the referring agency suspects problems in these areas *
7 * * it is recommended that the physician be evaluated prior to carrying out
8 the Physician Assessment. If the above issues are identified during the
9 course of the Physician Assessment, the Assessment Report will include
10 recommendations for further evaluation through appropriate resources."

11 He also wrote a belligerent email to CPEP, which the organization did not answer. He
12 never determined whether the organization's website was up to date. He never actually
13 spoke with a person at the organization to determine whether, according to its website, it
14 would assess him and independently determine whether a psychiatric issue was present,
15 in which case it would refer him to an "appropriate resource." He never contacted the
16 board with the information that he had obtained in order to give the board the opportunity
17 to provide an alternative order. In short, even if, in fact, it would have been impossible
18 for petitioner to obtain a psychiatric evaluation by following through on the order to
19 submit himself to a general competence evaluation at CPEP--a fact that the record does
20 not establish with absolute certainty--petitioner nonetheless had an obligation to make a
21 good faith effort to comply with the board's order, and that effort encompassed a duty to
22 report the asserted impossibility of compliance so that the board could take appropriate
23 alternative action. Instead, petitioner visited a website, wrote a belligerent email, and
24 made no further efforts. The board did not err in concluding that petitioner willfully

1 violated a board order.

2 Finally, petitioner asserts in his third assignment of error that the board
3 exceeded its discretion in assessing costs and a civil penalty of \$10,000. The board's
4 authority to discipline licensees derives from ORS 677.205, which provides that, if the
5 board finds a disciplinary violation, it may invoke a variety of methods of discipline,
6 including suspension or revocation of a petitioner's license and "such other disciplinary
7 action as the board in its discretion finds proper, including the assessment of the costs of
8 the disciplinary proceeding as a civil penalty or assessment of a civil penalty not to
9 exceed \$10,000, or both." ORS 677.205(2)(d), (f). We have no difficulty concluding
10 that the board did not abuse its discretion in assessing against petitioner the costs of the
11 disciplinary proceeding necessitated by petitioner's challenge to the board's determination
12 to place his license in inactive status. We affirm that assessment without further
13 discussion. We disagree, however, with the assessment of the civil penalty.

14 Petitioner points out that, by the time the board initiated its complaint, his
15 license was in inactive status; thus, in his view, it was unnecessary for him to submit to a
16 competency evaluation. Further, by the time of the hearing, petitioner had surrendered
17 his license. He asserts that those factors eliminated any practical reason for the hearing
18 or the assessment of a fine and mitigated his violations. However, ORS 677.175(3)
19 provides that "[t]he surrender, retirement or other forfeiture, expiration or cancellation of
20 a license issued by the board shall not deprive the board of its authority to institute or
21 continue a disciplinary action against the licensee upon any ground provided by law."

1 Petitioner's voluntary surrender of his license did not deprive the board of its authority to
2 continue the disciplinary proceeding and to impose discipline on petitioner for his
3 violations.

4 That conclusion, however, does not mean that the board's discretion to
5 impose sanctions is unlimited. Our review of the agency's exercise of its discretion is
6 governed by ORS 183.482:

7 "(7) [T]he court shall not substitute its judgment for that of the agency as to
8 any issue of fact or agency discretion. * * *

9 " * * * * *

10 "[8] (b) The court shall remand the order to the agency if it finds
11 the agency's exercise of discretion to be:

12 "(A) Outside the range of discretion delegated to the agency by law;

13 "(B) Inconsistent with an agency rule, an officially stated agency
14 position, or a prior agency practice, if the inconsistency is not explained by
15 the agency; or

16 "(C) Otherwise in violation of a constitutional or statutory
17 provision."

18 Petitioner's argument recognizes that the board's imposition of sanctions is not
19 inconsistent with agency rule or practice, and he does not argue that it is in violation of
20 the constitution or a statute. Like the petitioner's argument in [Labor Ready Northwest,
21 Inc. v. BOLI](#), 208 Or App 195, 202, 145 P3d 232 (2006), *rev den*, 342 Or 473 (2007),
22 petitioner's argument here is that the agency's exercise of its discretion in this case was
23 "[o]utside the range of discretion" delegated by statute. In that case, the Bureau of Labor
24 and Industries (BOLI) ruled that the petitioner had violated prevailing wage laws and, as

1 a penalty, debarred the petitioner from public works contracts or subcontracts for one
2 year. *Id.* at 197. In rejecting the petitioner's argument that the penalty was outside the
3 agency's range of discretion, we reasoned,

4 "Petitioner also argues that BOLI's imposition of a one-year period
5 of debarment is so excessive and disproportionate to the offense committed
6 that it necessarily falls outside the range of BOLI's discretion. To be sure, a
7 one-year debarment is a significant penalty. In fact, we have described
8 debarment as an 'extreme sanction.' However, given the statutory mandate
9 that BOLI 'shall' debar upon making certain findings and the fact that the
10 agency's discretion extends to imposition of a three-year period, *former*
11 ORS 279.361(1), we cannot say that a one-year debarment--only one-third
12 of the maximum potential allowable sanction--is so excessive in the totality
13 of the circumstances as to be outside the range of discretion committed to
14 the agency."

15 *Id.* at 204 (citation omitted). Here, on the other hand, the board imposed on petitioner the
16 most severe sanction available. The board's options, as noted, were suspension or
17 revocation of petitioner's license and "such other disciplinary action as the board in its
18 discretion finds proper, including the assessment of the costs of the disciplinary
19 proceeding as a civil penalty or assessment of a civil penalty not to exceed \$10,000, or
20 both." ORS 677.205(2)(d), (f). Petitioner had already surrendered his license, so that
21 sanction was not available. Thus, the \$10,000 fine in addition to the cost of the
22 disciplinary proceedings--\$14,599.05--were the maximum sanction within the board's
23 authority. That sanction was imposed on petitioner because, to put it plainly, he was
24 uncooperative and belligerent. Further, the "unprofessional or dishonorable" conduct for
25 which he was sanctioned did not have any direct relation to public safety or the care of
26 patients. Under the totality of the circumstances, we conclude that the \$10,000 fine was

- 1 disproportional to petitioner's offense. We therefore reverse as to the civil penalty and
- 2 remand for reconsideration.
- 3 Civil penalty reversed and remanded; otherwise affirmed.