

IN THE COURT OF APPEALS OF IOWA

No. 3-772 / 13-0162
Filed September 5, 2013

MARC A. HAGEN, DDS,
Petitioner-Appellant,

vs.

IOWA DENTAL BOARD,
Respondent-Appellee.

Appeal from the Iowa District Court for Bremer County, Colleen D. Weiland, Judge.

A dentist appeals the judicial review order affirming the Iowa Dental Board's sanction for engaging in professional practice after his license had lapsed. **AFFIRMED.**

John W. Holmes of Holmes & Holmes, Waterloo, for appellant.

Thomas J. Miller, Attorney General, and Sara Scott, Assistant Attorney General, for appellee.

Considered by Vogel, P.J., and Danilson and Tabor, JJ.

TABOR, J.

A dentist challenges the sanction imposed by the Iowa Dental Board, which cited him for practicing dentistry after his license had expired in violation of Iowa Code section 147.10(2) (2011). Doctor Marc Hagen contends he timely mailed his renewal fee and application and did not realize the board did not receive them. Dr. Hagen argues the board should have presumed the paperwork was properly mailed and should not have punished him without proof he knew his license had lapsed. He also suggests the board's action may result in consequences grossly disproportionate to his conduct.

Like the board, we are sympathetic to the fact that Dr. Hagen believed he properly submitted his renewal application. But because we find no legal error in the board's interpretation of section 147.10(2) and applicable provisions of the Iowa Administrative Code, we affirm the judicial review order.

I. Background Facts and Procedure

Dr. Hagen has been licensed to practice dentistry in Iowa since 1996. He has continually practiced since that time. Dental licenses in Iowa expire on August 31 in even numbered years. Iowa Admin. Code r. 650-14.1. The board gives dentists a sixty-day grace period until November 1 to renew their licenses. After that, the board considers a license lapsed and invalid. Iowa Admin. Code r. 650-14.4(2). Under this regulatory scheme, Dr. Hagen's license was up for renewal on August 31, 2010. Dr. Hagen received his renewal notice and application from the board in July 2010. On August 30, 2010, Dr. Hagen

purchased a counter check¹ from Veridian Credit Union payable to “Iowa Board of Dental Examiners” in the sum of \$315 for his license renewal fee. Yet the Board has no record of receiving either the fee or the application. Dr. Hagen testified he placed the check and application in the mail during his lunch hour on August 30, 2010, but did not have documentation from the post office to support his recollection.

On March 10, 2011, the board fielded a call from an insurance company concerning the status of Dr. Hagen’s license. The board could not find a record in its electronic database showing Dr. Hagen had renewed his license. Board investigator Brian Sedars met with Dr. Hagen at his dental office on March 14, 2011. Dr. Hagen was surprised to learn his license had lapsed and produced a receipt for the counter check he purchased on August 30, 2010. The bank confirmed the check had never been presented for payment. After talking with Dr. Hagen, Sedars confirmed with his office that the board had received nothing from Dr. Hagen in 2010. The last record the board had on file from Dr. Hagen was in 2008, the previous renewal period. Dr. Hagen immediately stopped practicing dentistry until he complied with the reinstatement process.

On December 16, 2011, the board brought charges against Dr. Hagen under Iowa Administrative Code rule 650-30.4(15) for practicing dentistry after failing to renew his license. The board held a disciplinary hearing on February 1, 2012. The board heard testimony from Dr. Hagen and investigator Sedars. The

¹ According to Dr. Hagen’s testimony, the credit union debited the amount of the check from his account on August 30, 2010. He did not learn the counter check had not been cashed until March 2011.

board issued an order on March 7, 2012, finding Dr. Hagen had practiced dentistry from November 1, 2010 until March 17, 2011 with a lapsed license. The board cited Dr. Hagen for a violation of rule 650-30.4(15) and warned him that further violations could result in more severe sanctions. The board also ordered Dr. Hagen to pay a \$500 civil penalty. Dr. Hagen filed his petition for judicial review in Bremer County District Court on March 27, 2012. The district court affirmed the board's decision on January 7, 2013. Dr. Hagen appeals that judicial review order.

II. Issues Raised on Appeal

In his appeal, Dr. Hagen attacks the board's action on four grounds. First, he claims the board based its decision on an erroneous interpretation of Iowa Code section 147.10² and Iowa Admin. Code rule 650-30.4(15).³ See Iowa Code

² Entitled "Renewal," this code section states:

"1. Every license to practice a profession shall expire in multiyear intervals and be renewed as determined by the board upon application by the licensee. Each board shall establish rules for license renewal and concomitant fees. Application for renewal shall be made to the board accompanied by the required fee at least thirty days prior to the expiration of such license.

2. Each board may by rule establish a grace period following expiration of a license in which the license is not invalidated. Each board may assess a reasonable penalty for renewal of a license during the grace period. Failure of a licensee to renew a license within the grace period shall cause the license to become inactive or lapsed. A licensee whose license is inactive or lapsed shall not engage in the practice of the profession until the license is reactivated or reinstated."

³ This rule states, in pertinent part: "The following shall constitute grounds for the imposition by the board of one or more of the disciplinary sanctions set forth in rule 650-30.2(153) specifically including the imposition of civil penalties not to exceed \$10,000. . . . 15. Engaging in the practice of dentistry . . . in Iowa after failing to renew a license or registration to practice in Iowa within 60 days of expiration of the license or registration."

§ 17A.19(10)(c). Under this claim he addresses the common-law mail box rule and alleges a knowledge element in section 147.10(2) and rule 650-30.4(15).

Second, he claims the board did not consider relevant and important matters relating to the propriety or desirability of its action. *See id.* § 17A.19(10)(j). Specifically, Dr. Hagen argues the board overlooked his “shock” at learning his license was lapsed and his purchase of a counter check payable to the board as showing a “good faith effort” to renew his license as required.

Third, he contends the board’s disciplinary action was not required by law and its negative impact on his rights will be grossly disproportionate to its benefit to the public interest. *See id.* § 17A.19(10)(k). As part of this contention Dr. Hagen speculates “third-party payers such as Blue Cross” may seek reimbursement for sums “far greater than \$10,000” for payments they made during the time his license was lapsed.

Fourth and finally, he alleges the board’s action was otherwise unreasonable, arbitrary, capricious, or an abuse of discretion. *See id.* § 17A.19(10)(n). In this allegation he returns to his argument that it was unreasonable for the board to punish him when he did not subjectively know his license had lapsed.

III. Scope and Standards of Review

Iowa Code section 17A.19(10) governs judicial review of the board’s decision. *See NextEra Energy Resources LLC v. Iowa Utils. Bd.*, 815 N.W.2d 30, 36 (Iowa 2012). Our first step is to decide the level of deference required. If the legislature clearly vested the board with the authority to interpret specific

terms of a statute, we defer to the board's interpretation and may only reverse if the interpretation is "irrational, illogical, or wholly unjustifiable." *Id.* at 37 (citing Iowa Code § 17A.19(10)(I)). But if the legislature did not clearly vest the agency with interpretive authority, then our review is for correction of errors at law. *Id.* (citing § 17A.19(10)(c)).

To determine the breadth of the board's vested authority, we carefully consider "the specific language the agency has interpreted as well as the specific duties and authority given to the agency with respect to enforcing particular statutes." See *Renda v. Iowa Civil Rights Comm'n*, 784 N.W.2d 8, 13 (Iowa 2010). We recognize even though "[t]he legislature may explicitly vest the authority to interpret an entire statutory scheme with an agency[,] . . . the fact that an agency has been granted rule making authority does not 'give[] an agency the authority to interpret all statutory language.'" *Evercom Sys., Inc. v. Iowa Utils. Bd.*, 805 N.W.2d 758, 762 (Iowa 2011) (quoting *Renda*, 784 N.W.2d at 13). "[B]road articulations of an agency's authority, or lack of authority, should be avoided in the absence of an express grant of broad interpretive authority." *Renda*, 784 N.W.2d at 14. The agency's own belief the legislature vested it with interpretive authority is irrelevant. Iowa Code § 17A.19(11)(a).

In this case, the dental board was called to interpret what it meant to "engage in the practice of the profession" after the "failure of the licensee to

renew” a license as set out in Iowa Code section 147.10(2).⁴ See also Iowa Admin. Code r. 650-30.4(15). We find the legislature did not delegate authority to the board to interpret the language at issue. The terms address general license renewal and practice procedures which are not exclusively within the expertise of the dental board. See *Gartner v. Iowa Dep’t of Pub. Health*, 830 N.W.2d 335, 344 (Iowa 2013). Since we find the board lacks interpretive authority, we give no deference to its reading of the statute. Iowa Code § 17A.19(11)(b).

The goal of statutory interpretation is to discover the true intention of the legislature. *Bernau v. Iowa Dep’t of Transp.*, 580 N.W.2d 757, 761 (Iowa 1998). In ascertaining legislative intent, we first look at the statute’s language. *Id.* We do not search beyond the express terms when their meaning is clear. *State v. Snyder*, 634 N.W.2d 613, 615 (Iowa 2001).

The parties agree our review of the board’s decision not to afford Dr. Hagen the rebuttable presumption of delivery under the “mailbox rule” is for errors at law. See *Lange v. Iowa Dep’t of Revenue*, 710 N.W.2d 242, 248 (Iowa 2006).

⁴ Although Dr. Hagen alternatively cites to section 17A.19(10)(n) in alleging the board acted unreasonably in construing section 147.10(2), he does not argue our review is for an abuse of discretion.

IV. Analysis

A. In declining to apply the “mailbox rule” to Dr. Hagen’s situation, did the dental board erroneously interpret Iowa Code section 147.10(2) and Iowa Administrative Code rule 650-30.4(15)?

In its decision, the board asserted it was Dr. Hagen’s responsibility as the licensee to ensure the board received his renewal application in a timely manner. The board’s rules support that assertion. “The licensee . . . is responsible for renewing the license . . . prior to its expiration.” Iowa Admin. Code r. 650-14.1(1)(b). “No renewal application shall be considered timely and sufficient until received by the board office and accompanied by all material required for renewal and all applicable renewal and late fees.” Iowa Admin. Code r. 650-14.1(1)(d).

Dr. Hagen asserts he should benefit from the legal presumption that when an item is properly mailed, it is received by the addressee. *See Montgomery Ward Inc. v. Davis*, 398 N.W.2d 869, 870 (Iowa 1987). He claims his testimony before the board satisfied the six foundational facts for application of the common law mailbox rule. There was evidence: 1) of the contents and execution of the paper, 2) that it was enclosed in a wrapper or otherwise prepared for transmission through the mail, 3) of the correct address of the person to receive it, 4) that the wrapper was properly addressed, 5) that postage was prepaid, and 6) that the article was deposited in the mail. *Id.* at 870-871.

Our supreme court has rejected this common law presumption when the case involves certain filings with the State of Iowa. See *Lange*, 710 N.W.2d at 247 (applying Iowa Code section 622.105⁵ to tax returns). A license renewal and fee is a report and payment required or authorized to be filed with a state board, and therefore falls under this statutory rule of evidence. Under section 622.105, a licensee must provide competent evidence other than his own testimony to benefit from the presumption of mailing. The statutory requirement of competent evidence is more stringent than the common law proof of office custom. *Id.* at 248.

Dr. Hagen offers only his own testimony he mailed the license renewal. Dr. Hagen claims the counter check he drew from his Veridian Credit Union account on August 30, 2010 qualifies as other competent evidence. But purchasing the counter check only shows Dr. Hagen's intent to renew his license, it does not prove he mailed the renewal application or fee. See *Lange*, 710 N.W.2d at 248 (billing for postage not sufficient competent evidence to show taxpayers deposited returns in the mail on that date). Dr. Hagen presents no independent evidence he timely submitted his renewal materials. Like the district

⁵ This section provides:

Any report, claim, tax return, statement, or any payment required or authorized to be filed or made to the state, or any political subdivision which is transmitted through the United States mail or mailed but not received by the state or political subdivision or received and the cancellation mark is illegible, erroneous or omitted, shall be deemed filed or made and received on the date it was mailed if the sender establishes by competent evidence that the report, claim, tax return, statement, or payment was deposited in the United States mail on or before the date for filing or paying.

For the purposes of this section 'competent evidence' means evidence, in addition to the testimony of the sender, sufficient or adequate to prove that the document was mailed on a specified date which evidence is credible and of such a nature to reasonably support the determination that the letter was mailed on a specified date.

Iowa Code § 622.105

court, we find no legal error in the board's refusal to presume Dr. Hagen mailed his application and fee.

B. Did the board err by not imposing a knowledge requirement under section 147.10(2) and rule 650-30.4(15)?

Dr. Hagen argues the board should not have disciplined him in the absence of proof he *knew* he was engaging in the practice of dentistry after failing to renew his license. He contends the board erroneously interpreted section 147.10(2) and rule 650-30.4(15) by faulting him for practicing on a license he did not realize had lapsed.

Like the district court, we find the plain language of the statute and rule reveals no knowledge requirement. See *State v. Hopkins*, 465 N.W.2d 894, 896-97 (Iowa 1991) (assuming if legislature had intended a knowledge requirement it would have written it into statute). When the legislature intends to require proof of knowledge, it expressly states that in the disciplinary statute. See, e.g., Iowa Code § 153.34(12) (allowing sanctions for “knowingly aiding . . . a person to unlawfully practice dentistry”). In this case, the board was required to find only two elements: (1) Dr. Hagen engaged in the practice of dentistry (2) after failing to renew his license. The board was not required to find Dr. Hagen subjectively knew he failed to renew his license. If that was the case, any licensee who inadvertently forgot to take the necessary steps to renew his license would be immune from disciplinary action. Here Dr. Hagen violated the statute and rule by practicing dentistry for four months after his license expired—whether he realized it or not.

Moreover, as the board notes, Dr. Hagen had constructive knowledge the board did not receive his renewal application and fee because the board did not send him the current renewal card that he was required to prominently display at his practice location. See Iowa Admin. Code r. 650-10.2. Dr. Hagen acknowledged in his testimony he was still displaying the 2008 renewal in the hallway of his office when the investigator visited him in 2011.

The board did not err in declining to require proof of actual knowledge before finding Dr. Hagen in violation of section 147.10(2) and rule 650-30.4(15).

C. Did the board fail to consider relevant and important matters relating to the propriety or desirability of its action?

Hagen asserts the board ignored three key facts in its decision-making process. First, he was shocked to learn his license had lapsed. Second, the credit union's records show the check made out for the purpose of the renewal fee. Third, those records indicate the check had never been presented for payment.

A close reading of the board's findings of fact reflect its consideration of these three points. But even if the board did not return to these points in its conclusions of law, we disagree with Dr. Hagen's assertion the board overlooked relevant matters a rational decision maker would have considered before taking action. See Iowa Code § 17A.19(10)(j). Because the board properly rejected Dr. Hagen's mailbox rule and knowledge arguments, these allegedly mitigating circumstances were not critical to the board's decision making.

D. Was the board's action so grossly disproportionate to the benefits gained by the public interest that it lacked any foundation to be a rational policy decision?

Courts may grant relief from an agency action when the action is “not required by law and its negative impact on the private rights affected is so grossly disproportionate to the benefits accruing to the public interest from that action that it must necessarily be deemed to lack any foundation in rational agency policy.” Iowa Code § 17A.19(10)(k).

The board in determining the nature and severity of the discipline may consider the following factors:

1. The relative seriousness of the violation as it relates to assuring the citizens of this state a high standard of professional care.
2. The facts of the particular violation.
3. Any extenuating circumstances or other countervailing considerations.
4. Number of prior violations or complaints.
5. Seriousness of prior violations or complaints.
6. Whether remedial action has been taken.
7. Such other factors as may reflect upon the competency, ethical standards and professional conduct of the licensee or registrant.

Iowa Admin. Code r. 650-30.3.

The board has discretion to impose a range of sanctions—including revoking or suspending dentists' licenses; probation; requiring additional training or education; ordering a physical, mental, or clinical evaluation; civil penalties not to exceed \$10,000; and a citation and warning. Iowa Admin. Code r. 650-30.2. In this case the board cited Dr. Hagen for a violation and warned him more severe sanctions could be imposed if the problem were repeated; it also ordered

a \$500 civil penalty, well below the maximum of \$10,000. See Iowa Admin. Code r. 650-30.4.

The primary responsibility of a professional licensing board is to ensure the protection of public health, safety, and welfare. *Bd of Dental Exam'rs v. Hufford*, 461 N.W.2d 194, 196 (Iowa 1990). Ensuring practicing dentists timely renew their licenses, and record the requisite hours of continuing education, contributes to the public welfare. See Iowa Admin. Code r. 650-14.1(3). As the district court noted, the board's decision to fine Dr. Hagen \$500 and give him a warning was not disproportionate to his conduct, and, in fact was "relatively mild compared to other disciplinary options available" and was consistent with prior board decisions.

But it is not the \$500 fine that drives Dr. Hagen's appeal. Dr. Hagen argues he will be disproportionately harmed by the board's action because of third-party payers seeking reimbursement for payment to his practice during the time his license had lapsed. He told the board he received a notice from Blue Cross saying, "they want money back from the time I was unlicensed." On appeal, he contends the board's decision "if allowed to stand puts him in a position where third-party payers such as Blue Cross can seek reimbursement for all sums they paid to him during that period. He estimates "it will produce a penalty which may be far greater than \$10,000."

The Board is vested by statute with broad authority to adopt and enforce rules regulating the practice of dentistry. Iowa Code § 272C.3(1)(a). This includes the power to discipline licensees as necessary. See *Id.* §§153.33(1),

153.33(8). Whether the board's action will lead to third-party payers seeking reimbursement is speculative, and may have occurred regardless of the board's decision to cite Dr. Hagen. Notably, an inquiry from an insurance representative launched the board's investigation into his license status. Moreover, the insurance refunds feared by Dr. Hagen would be collateral consequences of the board's decision. Our supreme court has considered only the direct consequences of an agency's action when deciding whether it was grossly disproportionate to an individual's conduct. *See, e.g., Zieckler v. Ampride*, 743 N.W.2d 530, 533-34 (Iowa 2007) (finding rule requiring dismissal of appeal for failure to pay for transcript was grossly disproportionate sanction). We conclude the board's action was not grossly disproportionate to Dr. Hagen's conduct.

E. Was the board's decision unreasonable?

Dr. Hagen claims his rights were prejudiced because the board's decision was an unreasonable interpretation of section 147.10(2) and rule 650-30.4(15). *See* Iowa Code § 17A.19(10)(n). He contends the board "engrafted requirements on the licensee neither found in the language of the statute nor the language of their rule." Specifically, he objects to the board's references to his "non-receipt of the renewal card" and the requirement that it be prominently displayed.

Contrary to Dr. Hagen's argument, the board did not engraft a requirement onto the rule that he receive and display the renewal card. The board's decision mentioned his non-receipt of the updated card as a "red flag" that his submission was not received: "Respondent should have followed up with the board and

verified that the renewal application was in fact received, particularly when he did not receive his renewal card as expected.”

As discussed above the board’s interpretation of section 147.10(2) and rule 650-30.4(15) was sound. Dr. Hagen, in fact, practiced dentistry after failing to renew his license—even if he subjectively believed he had properly sent the application and fee. Accordingly, we cannot grant relief under section 17A.19(10)(n).

AFFIRMED.