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SJC-13226

THOMAS C. FRANCHINI vs. BOARD OF REGISTRATION IN PODIATRY.

October 6, 2022.

Podiatrist. Doctor, License to practice medicine.  
Administrative Law, Decision.

The petitioner, Thomas C. Franchini, appeals from a judgment of a single justice of this court affirming a decision of the Board of Registration in Podiatry that revoked Franchini's license to practice podiatry in Massachusetts. We affirm.

Prior proceedings. In January 2018, the board issued an order to show cause, alleging that an application for licensure submitted by Franchini to the board, dated November 8, 2016 (application) contained knowingly false or incomplete and misleading responses to certain questions, in violation of various statutory and regulatory provisions, and directing Franchini to show cause why his license should not be suspended, revoked, or otherwise subject to disciplinary sanctions.

Franchini responded to the order to show cause, arguing that the responses at issue either were technically accurate, or where inaccurate, were made inadvertently, without any intent to deceive. In October 2018, prosecuting counsel for the division of professional licensure filed a motion requesting that the administrative hearings officer issue a partial summary decision. Franchini opposed the motion.

In April 2019, the hearings officer issued a decision on the motion for summary disposition, granting the motion with respect to the allegations that Franchini had engaged in gross misconduct by virtue of statements on his licensure application

that were untrue, incomplete, and misleading, but determining that additional factfinding was necessary with respect to allegations that Franchini should be disciplined for engaging in fraud, deceit, or knowingly making false statements. An evidentiary hearing was held in June 2019. At that hearing the parties entered into a series of stipulations establishing that Franchini had actual knowledge as to the false or misleading nature of certain responses provided in his licensure application. As a result, the evidentiary hearing was converted into a hearing solely on the issue of sanctions.

The hearings officer issued a tentative decision in December 2019, finding that Franchini knowingly made certain false and misleading statements in his licensure application and recommending that the board impose disciplinary sanctions. Franchini filed objections to the tentative decision. In April 2020, the board issued its findings of fact, rulings of law, and order (decision), largely adopting the hearing officer's tentative decision, with only minor corrections and revisions. More specifically, the board found that Franchini committed the following disciplinary violations: "gross misconduct of such a nature so as to call into question [Franchini's] ability to practice podiatry, G. L. c. 112, § 61, ¶ 2(1), dishonesty, fraud, or deceit reasonably related to the practice of podiatry, G. L. c. 112, § 61, ¶ 2(5), and knowingly making false statements in his application to the board. G. L. c. 112, § 18." Franchini now appeals.

Summary of relevant facts. The following facts are drawn from the board's April 2020 decision and supplemented by undisputed facts from the record.

It is undisputed that Franchini submitted the application at issue to the board, declaring "under the pains and penalties of perjury" that his that his responses were "truthful and accurate" and affirming his understanding that "the failure to provide accurate information may be grounds for the [board] to deny, suspend, or revoke" a license issued pursuant to the application.

Among other things, the application required, in Section C, that Franchini list "all professional licenses/certificates" held in the U.S. or any foreign country and to arrange for each issuing jurisdiction "to send verification of licensure status, either current or expired . . . ." Further explanatory language in the margin of the application indicates that Section C applies to "persons who have ever or currently hold licenses,"

and Section C includes a grid with blank spaces for applicants to enter the requested information, including columns in which to indicate whether a license is "current," "lapsed," "revoked/suspended," or subject to "probation." In this section, Franchini listed three licenses, issued by the States of Rhode Island, Connecticut, and New York, respectively. The board found that Franchini's response was incomplete, misleading, and knowingly made, as Franchini had also been licensed in Vermont, Maine, and the District of Columbia.

The application further required Franchini to indicate whether any "disciplinary, termination, or restrictive action . . . [had been] taken against [him] within the past ten years by a . . . Professional Association or Organization Hospital," and if so, to attach an explanation to the application. Franchini responded in the negative. The board concluded that this statement was false because Franchini's privileges to practice podiatry were summarily suspended by the United States Department of Veteran's Affairs, VA Maine Healthcare System by correspondence dated April 28, 2010, due to concerns "raised to suggest that aspects of [Franchini's] clinical practice do not meet the accepted standards of practice and potentially constitute an imminent threat to patient welfare." The board further concluded that Franchini knew the statement was false when he completed the application.

The board noted in its decision that, as a Federal employee working at the Department of Veterans Affairs in Maine, Franchini was not individually amenable to suit under the Federal Tort Claims Act, but he was subject to claims presented to that administrative agency; in fact, bringing such an administrative claim is a prerequisite to bringing an action against the individual's public employer in Federal court. See 28 U.S.C. §§ 2674, 2675(a). The board found that at least four such claims had been lodged against Franchini and remained unresolved at the time he signed the application. As to those claims, the board found that Franchini truthfully stated that he was not a "defendant in a civil proceeding," as he was not a properly-named defendant in any civil suit pursuant to the Federal Tort Claims Act. However, the board found that Franchini's negative response to the question whether "any medical malpractice claim had been made against [him] which ha[d] not yet been finally settled or adjudicated, whether or not a lawsuit was filed in relation to the claim," was knowingly false.

In contrast, Franchini answered "yes" to the question whether any medical malpractice claims made against him had been "settled, adjudicated, or otherwise resolved." The board found that this answer, although technically correct, was knowingly incomplete and misleading, as Franchini did not provide any further elaboration in connection with this response. At the time Franchini submitted the application, the National Practitioner Data Bank indicated that two medical malpractice payments had been made to resolve claims against Franchini, one in January 2014 and another in March 2014. Franchini's license to practice podiatry in Massachusetts was issued in reliance on the false or incomplete and misleading answers provided by him. Based on all these findings, the board revoked his license.

Discussion. "Under G. L. c. 112, § 64, a person whose license to practice medicine has been revoked may petition the court to 'enter a decree revising or reversing the decision . . . in accordance with the standards for review provided' in G. L. c. 30A, § 14 (7)." Knight v. Board of Registration in Med., 487 Mass. 1019, 1022 (2021), quoting Clark v. Board of Registration of Social Workers, 464 Mass. 1008, 1009 (2013). "Under the latter statute, the court can modify or set aside the decision of the board only if the petitioner demonstrates that his or her 'substantial rights . . . may have been prejudiced' because the agency decision is in violation of constitutional provisions, based on an error of law, unsupported by substantial evidence, arbitrary and capricious, or an abuse of discretion, or contains one or more other enumerated defects not at issue here." Knight supra, quoting G. L. c. 30A, § 14 (7). See Weinberg v. Board of Registration in Med., 443 Mass. 679, 685 (2005); Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (2002). "This court 'reviews the Massachusetts board's decision directly, even though the appeal is from a decision of the single justice.'" Knight, supra, quoting Lankheim v. Board of Registration in Nursing, 458 Mass. 1022, 1023 (2011).

On appeal, Franchini raises a number of arguments in support of his contention that the board's decision was unsupported by substantial evidence and that the board's imposition of the sanction of revocation was arbitrary and capricious. At the heart of these arguments is Franchini's contention that the responses he provided in the application were technically correct, or where admittedly incorrect, that he lacked any fraudulent or deceitful intent. Franchini made these same arguments before the board, and the board rejected them, concluding in each instance that Franchini's false or incomplete and misleading responses were knowingly made. There is ample

evidence in the record to support the board's findings of fact and conclusions of law and to support the board's concomitant rejection of Franchini's alternate characterization of events. Franchini's repetition of those arguments here does not satisfy his burden to demonstrate that the board's decision was arbitrary and capricious, unsupported by substantial evidence, or that it suffered from another enumerated defect under G. L. c. 30A, § 14 (7). See Knight, supra at 1022. Accordingly, we affirm the judgment of the single justice.

So ordered.

The case was submitted on briefs.

Thomas C. Franchini, pro se.

LaRonica K. Lightfoot, Assistant Attorney General, for the respondent.