

STATE OF MICHIGAN
COURT OF APPEALS

BUREAU OF HEALTH PROFESSIONS,

Petitioner-Appellee,

v

JOHN GIL CHUN, MD,

Respondent-Appellant.

UNPUBLISHED

June 8, 2010

No. 285256

Dep't of Community Health,
Board of Medicine

LC No. 2005-004227

Before: DONOFRIO, P.J., and WILDER and OWENS, JJ.

PER CURIAM.

Respondent appeals as of right from a final order of the Disciplinary Subcommittee of the Department of Community Health, Board of Medicine (disciplinary subcommittee). MCL 333.16237(6). We affirm.

Respondent was a physician responsible for treating the medical needs of patients in a prison for the mentally ill. He was terminated from employment at the facility in October 2000, reinstated in May 2001, and terminated again in September 2001. Petitioner filed its complaint alleging respondent's negligent and incompetent care of 11 patients at the facility. The disciplinary subcommittee accepted the hearing referee's conclusion that respondent violated MCL 333.16221(a) (negligence or failure to exercise due care), and MCL 333.16221(b)(i) (incompetence), and suspended respondent's medical license for at least six months. On appeal, respondent argues only that the complaint should have been dismissed because the Department of Community Health violated MCL 333.16231(5) in taking more than 90 days to investigate and take action on the allegations against respondent. Specifically, respondent argues that the 90-day investigation requirement of MCL 333.16231(5) operates as a statute of limitations to bar sanctions against respondent. We disagree.

The Department of Community Health and the Board of Medicine regulate the practice of medicine under the Public Health Code, MCL 333.1101, *et seq.*, and the Administrative Procedures Act, MCL 24.201 *et seq.* *Hicks v Dep't of Commerce, Bd of Medicine*, 220 Mich App 501, 505; 560 NW2d 54 (1996). The disciplinary subcommittee is responsible for deciding sanctions. MCL 333.16221; MCL 333.16226. MCL 333.16231 proscribes procedures for investigations by the Department of Community Health of activities related to the practice of a health profession by a licensee. MCL 333.16231(5) provides:

Within 90 days after an investigation is initiated under subsection (2) or (3), the department shall do 1 or more of the following:

- (a) Issue a formal complaint.
- (b) Conduct a compliance conference under subsection (4).
- (c) Issue a summary suspension.
- (d) Issue a cease and desist order.
- (e) Dismiss the complaint.
- (f) Place in the complaint file not more than 1 written extension of not more than 30 days to take action under this subsection.

A referral was made to the Physician's Review Organization of Michigan by the Bureau of Health Services for review of respondent's care of three patients in May 2002. The State's expert appears to have also provided a review of respondent's care of the other patients included in the complaint in February 2005. The administrative hearing was held between June 2006 and April 2007, and the final order of the disciplinary subcommittee was entered on April 15, 2008.

Michigan cases have found similar violations of statutory time requirements did not require dismissal. In *Consumer & Industry Services v Greenberg*, 231 Mich App 466, 468; 586 NW2d 560 (1998), this Court considered a subcommittee violation of MCL 333.16232(3) which states that "[a] disciplinary subcommittee shall meet within 60 days after receipt of the recommended findings of fact and conclusions of law from a hearings examiner to impose a penalty." *Greenberg* determined that the time frames set out in the statute are primarily guidelines for the disciplinary system. *Id.* *Greenberg* reasoned that multiple provisions of the Public Health Code impose time restrictions for disciplinary complaint processing, but none of them impose sanctions for violating these provisions. *Id.* at 469. Further, MCL 333.16241(8)(e) explicitly contemplates that delays in the deadlines will occur. *Id.* Accordingly, *Greenberg* concluded that violation of the time requirement, especially without allegations of prejudice suffered by appellant, did not require dismissal of the complaint. *Id.* A review of our unpublished decisions on this question evidence the degree to which the *Greenberg* reasoning permeates this area of the law.

Here, MCL 333.16231(5) also does not provide for a sanction of dismissal if the investigation is extended beyond the statutory time frame. A clear reading of the statute shows that dismissal is provided as one option to pursue 90 days after an investigation has begun, not as a sanction for an investigation not completed on time.

The Legislature provided no express sanction for violating the time requirements of the statute beyond reporting to the Legislature as required by MCL 333.16241(8). *Greenberg*, 231 Mich App at 468-469. No sanction should be read into a clear statute that is not within the manifest intention of the Legislature as derived from the language of the statute itself. *People v Nugent*, 276 Mich App 183, 189; 740 NW2d 678 (2007); see also *Lash v Traverse City*, 479

Mich 180, 194; 735 NW2d 628 (2007) (observing that courts may not speculate as to the intent of the Legislature beyond the language expressed in the statute).

The Public Health Code is to be liberally construed to protect the health, safety, and welfare of the people. MCL 333.1111(2); *Twentieth Century Fox Home Entertainment, Inc v Dep't of Treasury*, 270 Mich App 539, 544; 716 NW2d 598 (2006). In *Latreille v Michigan State Bd of Chiropractic Examiners*, 357 Mich 440, 445-446; 98 NW2d 611 (1959), the Court stated that a responsibility to protect the public is a strong argument against applying a general statute of limitations by analogy. Here, likewise, it would not be reasonable to dismiss the complaint and fail the public in light of a complex and lengthy investigation.

Affirmed.

/s/ Pat M. Donofrio
/s/ Kurtis T. Wilder
/s/ Donad S. Owens