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IN THE COURT OF APPEALS OF INDIANA

Kathleen Anne Whaley, M.D.,
Appellant-Petitioner,

v.

Medical Licensing Board of Indiana,
Appellee-Respondent.

March 16, 2022

Court of Appeals Case No. 21A-MI-1525

Appeal from the Marion Superior Court

The Honorable Christopher B. Haile, Magistrate

Trial Court Cause No. 49D11-2103-MI-7731

Molter, Judge.

[1] Under Indiana law, it is unlawful to refuse to grant or renew a professional license based on certain expunged convictions. However, that prohibition does

not require any change or alteration to a prior disciplinary record or proceeding following an expungement.

[2] In this case, the Medical Licensing Board of Indiana ("the Board") placed the medical license of Kathleen Anne Whaley, M.D. ("Dr. Whaley") on inactive status because she was convicted of reckless driving. After her conviction was expunged, she asked the Board to amend her disciplinary records to show that her conviction was expunged and to remove other sanctions it had imposed. The Board denied her request because the expungement statutes do not require a change or alteration to prior disciplinary records or proceedings. Dr. Whaley sought review of the Board's decision in the trial court, which affirmed the Board's decision.

[3] On appeal, Dr. Whaley argues the trial court erred in denying her petition for review because the Board's refusal to amend her disciplinary records after her conviction was expunged violated the expungement statutes' anti-discrimination provision. Finding no error, we affirm.

Facts and Procedural History

[4] Dr. Whaley has a history of chemical dependency and mental illnesses, including major depression, bipolar disorder, and schizo-affective disorder, and she has participated in the Indiana State Medical Association's Physician Assistance Program several times since 2004. In the summer of 2016, she became delusional and had a psychotic break, which led to her being arrested in Parke County for driving between 90 and 107 miles per hour. Dr. Whaley told

the arresting officer she was in a hurry because "important voices on the car radio were telling her to leave town." Appellant's App. Vol. II at 203. That incident led to her conviction in May 2017 for reckless driving, a Class C misdemeanor.

[5] In late summer and early fall of 2016, Dr. Whaley broke off contact with the Physician Assistance Program for several weeks. Around the same time, she said she intended to move to upstate New York to be near family and friends, seek treatment for her mental illnesses, and practice medicine. In September 2016, Dr. Fred Frick, medical consultant to the Physician Assistance Program, notified the Board about Dr. Whaley's worsening mental illnesses, her failure to communicate with the program, and her failure to admit herself to a psychiatric inpatient program.

[6] On March 27, 2017, the State filed a complaint against Dr. Whaley because she continued to practice medicine despite her worsening mental illnesses and failed to follow the treatment recommended by the Physician Assistance Program. The State asked the Board to order Dr. Whaley to undergo a psychiatric evaluation and to subject her to discipline. About nine weeks later, the State filed an amended complaint, adding a third count alleging Dr. Whaley had been convicted of reckless driving.

[7] On September 11, 2017, the Board found Dr. Whaley had violated Indiana Code section 25-1-9-4(a)(2)(B) because she was convicted of reckless driving, a crime that "is harmful to the public," and that this violated medical professional

standards. Appellant's App. Vol. II at 143. At first, the Board indicated it would put Dr. Whaley's license on probationary status but ultimately declined to do so because she agreed to put her license on inactive status. *Id*. at 142, 144. Dr. Whaley also agreed to (1) not practice medicine or reside in Indiana; (2) subject herself to monitoring in New York; and (3) appear before the Board to reactivate her license. *Id*. at 142–43.

[8] In March 2020, Dr. Whaley's reckless driving conviction was expunged. About one week later, she filed a motion for rehearing[1] with the Board, contending, in part, that her expungement constituted newly discovered evidence that entitled her to relief from the Board's prior decision to discipline her. Specifically, she argued that under Indiana Code section 35-38-9-10(b)(5), maintaining the restrictions on her medical license would constitute unlawful discrimination because her conviction had been expunged. On February 5, 2021, the Board denied Dr. Whaley's motion for rehearing, finding that Indiana Code section 35-38-9-0.6(a)(3) did not require a change or alteration in Dr. Whaley's disciplinary record even though her conviction was expunged.

[9] On March 4, 2021, Dr. Whaley filed a petition for review in Marion Superior Court, raising the same grounds and request for relief that she raised in the

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[1] Both sides acknowledge Dr. Whaley's motion for rehearing was closer to a Trial Rule 60(B) motion for relief from judgment. *See* Appellant's App. Vol. II at 132; Appellee's Br. at 15, n.1. But we are bound to review the Board's decision as a ruling on a motion for rehearing because the judiciary must review an administrative agency's ruling on the basis that the agency used. *Dev. Servs. Alternatives, Inc. v. Ind. Family & Soc. Servs. Admin.*, 915 N.E.2d 169, 187 (Ind. Ct. App. 2009), *tran*s. *denied*.

motion for rehearing she had filed with the Board. On July 12, 2021, the trial court denied Dr. Whaley's petition for review for the same reasons the Board denied her motion for rehearing. Dr. Whaley now appeals.

Discussion and Decision

[10] This appeal centers on the interpretation of two expungement statutes, Indiana Code section 35-38-9-10 ("the anti-discrimination statute") and Indiana Code section 35-38-9-0.6(a)(3) ("the licensing statute"). Statutory interpretation is a question of law for the courts. *In re Paternity of I.I.P.*, 92 N.E.3d 1158, 1161–62 (Ind. Ct. App. 2018). We start with the plain language of the statute, giving words their "ordinary meaning and considering the structure of the statute as a whole." *West v. Off. of Ind. Sec'y of State*, 54 N.E.3d 349, 353 (Ind. 2016). We will not render a word or phrase meaningless if we can reconcile it with the rest of the statute. *Id*.

[11] The anti-discrimination statute provides, in part:

> It is unlawful discrimination for any person to: . . . (5) refuse to grant or renew a license, permit, or certificate necessary to engage in any activity, occupation, or profession . . . [for] any person because of a conviction . . . expunged . . . under this chapter.

Ind. Code § 35-38-9-10(b). The licensing statute provides: "This chapter does not require any change or alteration in . . . [a] disciplinary record or proceeding as it relates to a licensing, certification, or public entity." Ind. Code § 35-38-9-0.6(a)(3). Because Dr. Whaley's motion for rehearing requested that the Board

change or alter its records or proceedings as they relate to licensing, the Board and trial court were correct to interpret the licensing statute as not requiring the Board to grant the motion. Dr. Whaley makes several arguments supporting the conclusion that the licensing statute is inapplicable here and the anti-discrimination statute required the Board to grant her motion, but those arguments misapprehend the statutes.

[12] First, she argues that the licensing statute is unambiguous, and its only effect here is that the Board does not have to redact her name, substitute her initials, or destroy her record; it still must grant her petition for rehearing and vacate any sanctions related to the now expunged reckless driving conviction. This argument fails because Dr. Whaley reads the licensing statute too narrowly. Beyond saying there is no requirement to change or alter a "disciplinary record," the statute also says there is no requirement to alter or change a "proceeding." Ind. Code § 35-38-9-0.6(a)(3). The essence of a motion for rehearing or a Trial Rule 60(B) motion to set aside the judgment is a request to change the record or proceeding.

[13] Second, she argues that the Board's interpretation of the licensing statute would nullify the anti-discrimination statute. That argument fails for a couple of reasons. To begin with, the anti-discrimination provision, as relevant here, relates only to decisions to "grant or renew" a license, and the decision whether to grant rehearing is not a decision to grant or renew a license.

[14] Moreover, the licensing statute merely limits the reach of the anti-discrimination statute, it does not nullify the anti-discrimination statute. Even under the Board's and the trial court's correct interpretation of the licensing statute, the anti-discrimination statute still bars adverse professional licensing decisions based on a conviction which was expunged *before* discipline is imposed. So if Dr. Whaley's conviction had been expunged *before* the Board contemplated imposing sanctions, the anti-discrimination provision would have prevented the Board from using her expunged conviction to impose discipline.[2]

[15] Third, Dr. Whaley argues the Board and trial court failed to embrace a number of interpretive principles to reconcile the anti-discrimination and licensing statutes: specific statutory provisions take priority over general provisions; the meaning of ambiguous words may be ascertained by reference to associated words; a strict interpretation may be contrary to legislative intent; and remedial statutes should be construed liberally. To the extent these are interpretive principles our courts embrace, they only apply to ambiguous statutes and/or statutes which conflict with one another. But as we explained above, there is no ambiguity or conflict.

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[2] The anti-discrimination statute only pertains to consideration of an expunged conviction. It would not pertain to consideration of the facts *underlying* the conviction, nor to other issues which prompted disciplinary proceedings in this case. Dr. Whaley's reckless driving conviction was not even mentioned in the State's original complaint initiating disciplinary proceedings, and the State instead based its complaint on Dr. Whaley's worsening mental illnesses and her failure to follow the treatment recommended by the Physician Assistance Program. While the anti-discrimination statute would preclude consideration of the expunged conviction in future decisions to grant or renew a professional license, it would not bar consideration of these other alleged facts.

[16] Finally, Dr. Whaley's reliance on our Supreme Court's decision in *D.A. v. State*, 58 N.E.3d 169 (Ind. 2016), is misplaced. Dr. Whaley argues that the Supreme Court in *D.A.* "made clear that the anti-discrimination section of [the] expungement statute applies whether or not a collateral action remains accessible to the public." Appellant's Br. at 17 (citing *D.A.*, 58 N.E.3d at 173). Specifically, after holding that civil forfeiture records could not be expunged, the Court in *D.A.* observed that public access to civil forfeiture records "does not diminish [the anti-discrimination statute's] prohibition on discrimination based on an expunged conviction or arrest record." *D.A.*, 58 N.E.3d at 171–73. But that has no bearing on this case because *D.A.* preceded our legislature's decision to amend the Indiana Code to add the licensing statute. Because expungements are a creature of statute, the legislature retains authority to expand or limit that remedy as it sees fit, including to limit the reach of the anti-discrimination statute through the licensing statute.

[17] In sum, the Board did not misinterpret the law or abuse its discretion in denying Dr. Whaley's motion for rehearing, and the trial court did not error in denying her petition for review.

[18] Affirmed.

Riley, J., and Robb, J., concur.