

IN THE COURT OF APPEALS OF IOWA

FILED

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CLERK SUPREME COURT

MERLE D. BEAN, D.D.S.,)

Petitioner-Appellee,)

vs.)

IOWA BOARD OF DENTAL)
EXAMINERS,)

Respondent-Appellant.)

8-497
88-32

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Appeal from the Iowa District Court for Polk County
(AA 1256), Rodney Ryan, Judge.

The Board of Dental Examiners appeals the district court's decision overturning the Board's decision suspending a dentist's license to practice dentistry in the State of Iowa. **REVERSED AND REMANDED.**

Thomas J. Miller, Attorney General of Iowa, and Theresa O'Connell Weeg, Assistant Attorney General, for respondent-appellant.

Thomas P. Slater, Des Moines, for petitioner-appellee.

Considered by Schlegel, P.J., and Hayden and Habhab, JJ.

SCHLEGEL, P.J.

The Board of Dental Examiners appeals the district court's decision overturning the Board's decision suspending a dentist's license to practice dentistry in the State of Iowa. The Board contends the district court erred by finding there was insufficient competent evidence to support the agency's action. The Board also contends the district court erred by fashioning its own remedy (reinstatement of the license) rather than remanding to the Board for an appropriate remedy. We reverse the district court.

Dentist Merle Bean was accused of making improper sexual advances toward a 20 year old female patient. The Iowa Board of Dental Examiners (Board) filed a formal complaint against Bean on September 28, 1987, temporarily suspended his license to practice dentistry, and ordered a hearing. Upon hearing on October 21, 1987, the Board suspended Bean's license for five years, but provided that in the event he was able to successfully complete a psychiatric exam after six months, it would consider staying the suspension. The Board also required Bean to undergo counseling for six months. In the event the suspension is stayed, Bean will be placed on probation for the remainder of the five-year period, with the requirement that a dental auxiliary be present at all times Bean is providing patient care. The Board may also order Bean to

undergo additional counseling during the probationary period.

The review function of the district court following a contested case hearing is governed by Iowa Code 17A.19(8) (1987). When exercising the powers conferred on it by section 17A.19 the district court acts in an appellate capacity. Iowa Pub. Serv. Co. v. Iowa State Commerce Com'n, 263 N.W.2d 766, 768 (Iowa 1978). When this court reviews a decision of a district court rendered pursuant to 17A.19, the sole question is whether the district court correctly applied the law. In order to make that determination, this court applies the standards of section 17A.19(8) to the agency action to determine whether this court's conclusions are the same as those of the district court. Jackson Cty. Public Hos. v. Public Employment Relations Bd., 280 N.W.2d 426, 429 (Iowa 1979). Where the facts are disputed, we will adopt the factual determinations made by the agency as long as they are supported by substantial evidence when the record is viewed as a whole. Temple v. Vermeer Mfg. Co., 285 N.W.2d 157, 160 (Iowa 1979).

The Board contends that the trial court erred in finding there was not substantial evidence in the record to support the Board's decision suspending Bean's license to practice dentistry. In vacating the Board's decision, the district court concluded that the Board improperly admitted

and relied upon evidence without which there would not have been substantial evidence in the record to support the Board's findings and action. The court further stated that no reasonable fact finder could conclude that any admissions made by Bean were voluntary and that no reasonable fact finder could conclude that the investigating officer's testimony, which was the State's primary source of evidence against Bean, was used merely to supplement and explain other direct evidence. We disagree.

Although, as a general rule, hearsay evidence is admissible in administrative hearings, see Iowa Code section 17A.14(1), the Iowa Administrative Code applies a more restrictive standard to the use of hearsay in a hearing before the Board of Dental Examiners. That section provides that "Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions." 320 Iowa Admin. Code 51.8 (3). In the case at bar, the alleged victim, an adult female college student, was not present and did not testify during the hearing before the Board. Instead, Detective T.J. Thielman of the West Des Moines Police Department testified regarding his investigation of the criminal complaint filed by the victim against Bean and specific information regarding the victim's allegations was introduced through his testimony.

Detective Thielman further testified about his interview with Bean which was conducted at Bean's dental office subsequent to the filing of the complaint where, according to Detective Thielman's testimony, Bean at first denied the allegations. Thielman testified that when he told Bean he would subpoena a patient list for the purpose of interviewing Bean's other patients, if necessary, Bean, according to Detective Thielman, then admitted to the allegations.

Although the Board made a number of findings based upon Detective Thielman's testimony, the record indicates that it did not rely exclusively on his testimony. The Board found that Bean had written a letter of apology to the victim and her family in which he did not deny the allegations, and in which he stated "I don't ask you to understand my actions or my behavior as I do not understand it myself." He further stated that he did not plan on fighting the allegations, that he was wrong, and that he would be pleading guilty and would "ask the court for mercy" The Board also relied upon Bean's plea of guilty in Polk County District Court to assault on August 21, 1987, and on Bean's own admission at the Board hearing that he briefly touched the victim's breast as she left his office on the day of the alleged incident. Assuming that Detective Thielman's testimony did constitute hearsay, we conclude it was admissible, as it merely supplements other direct evidence in the record.

We further find Bean's confession to Detective Thielman was voluntary. The record is devoid of any evidence indicating that Detective Thielman intimidated or coerced Bean into making his confession. To the contrary, we believe that Detective Thielman extended courtesies to Bean above and beyond the call of duty, and that Detective Thielman's sensitivity to Bean's situation is to be commended.

Although the district court disputed the inference from the evidence that Bean committed all of the alleged improprieties, the fact that two inconsistent conclusions may be drawn from the record does not prevent the agency's finding from being supported by substantial evidence. Contract Services, Ltd. v. Iowa Dep't of Job Service, 372 N.W.2d 212, 215-16 (Iowa 1985). We find that there was substantial evidence in the record to support the Board's findings of fact, and that the Board properly found Bean guilty of dishonorable conduct in the practice of dentistry, in violation of Iowa Code section 153.34(9). We therefore reverse the district court and uphold the Board's decision.

REVERSED.