

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

SEPTEMBER 18, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

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No. 95-1489

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

FRANCOIS J. SACULLA, M.D.,

Petitioner-Appellant,

v.

**STATE OF WISCONSIN MEDICAL
EXAMINING BOARD AND
DEPARTMENT OF REGULATION
AND LICENSING,**

Respondents-Respondents.

APPEAL from an order of the circuit court for Racine County:
DENNIS J. FLYNN, Judge. *Affirmed.*

Before Anderson, P.J., Nettesheim and Snyder, JJ.

ANDERSON, P.J. Dr. Francois J. Saculla appeals from an order affirming the State of Wisconsin Medical Examining Board's (the Board) limitation of his license based upon the Board's finding that Saculla engaged in unprofessional conduct in violation of § 448.02(3), STATS., and WIS. ADM. CODE

§ MED. 10.02(2)(h), by having sexual contact with a patient. Saculla raises numerous issues on appeal relating to the sufficiency of the evidence, credibility determinations and his refusal to testify. Saculla further contends that he was deprived of due process during the disciplinary proceedings. We conclude that each of Saculla's contentions lacks merit. Accordingly, we affirm the trial court's order.

Saculla is licensed and registered to practice medicine and surgery in the state of Wisconsin, specializing in psychiatry. Saculla was employed as a psychiatrist at the Milwaukee County Mental Health Center (MCMHC) in Milwaukee, Wisconsin, from March 1989 through January 15, 1990.

The complainant, Kathy, was admitted to MCMHC for psychiatric problems twice in 1989. During both inpatient psychiatric hospitalizations, Kathy was under the professional care of Saculla. After Kathy's second discharge, Saculla prescribed a continuing care plan on an outpatient basis at MCMHC. Saculla, in his professional capacity, saw Kathy on an outpatient basis on December 5, 1989, and January 3, 1990.

Saculla also had several conversations with Kathy's mother, Mary, about Kathy's infatuation with him and Kathy's numerous telephone calls to his home. Mary and Saculla discussed the "transference" which often occurs with psychiatric patients and their doctors. Despite his concerns, Saculla never noted or reported Kathy's infatuation in her medical records at MCMHC.

Also omitted from Kathy's medical records are three visits she made to Saculla's residence in Racine between Thanksgiving and Christmas of 1989. The initial visit occurred on a Saturday afternoon. Saculla took Kathy to visit with a patient, and then "pick[ed] up some food and went back to his home."

On Kathy's second visit, she brought Saculla a VCR. In exchange he gave her a ski sweater. Kathy hooked up the VCR in his bedroom and the two watched a portion of one of Saculla's professional tapes to make sure the VCR was working properly. Kathy testified that during this visit she performed oral sex upon Saculla in his bedroom.

Kathy visited a third time to complete a disability application which Saculla was assisting her with. Kathy stayed several minutes and then left.

In March 1990, Kathy filed a letter of complaint against Saculla with Dr. L. Ronald Cromwell, associate medical director at MCMHC. After investigating the complaint, Cromwell referred the matter to the Board.

On September 17, 1990, Saculla was interviewed by Pam Ellefson, a state medical investigator. In the interview, Saculla denied any physical or sexual contact between him and Kathy. However, he provided additional details of the three visits from Kathy at his home.

As part of a separate investigation of the matter, Saculla and Betty Hass, a friend of Saculla, met with Attorney John Zwieg, who represented the

Department of Regulation and Licensing (the Department), and his investigator, Dale S. Nash, in early 1993. During the interview, Saculla stated that he wanted Kathy deposed to see if she could describe his genitalia. He also described Kathy as “delusional, paranoid, disordered and want[ing] to get attached to an individual of higher status than she.” Saculla admitted that Kathy was in his home on three occasions; that she made multiple calls to his home, once saying she loved him; and that he returned calls to Kathy at her home.

On March 10, 1993, the Department issued a complaint against Saculla on behalf of the Board. The complaint alleged that on three separate occasions between November 28, 1989, and Christmas of 1989, Saculla and Kathy “engaged in sexual conduct, including [Kathy] performing oral sex on [Saculla].” The complaint further alleged that by entering into a sexual relationship with a patient, Saculla’s behavior constituted unprofessional conduct as defined by § 448.02(3), STATS., and WIS. ADM. CODE § 10.02(2)(h), as such conduct is dangerous to the patient. Saculla denied the allegations.

An eight-day hearing was held between November 15, 1993, and January 7, 1994, before an administrative law judge (ALJ). In August 1994, the ALJ issued a decision which addressed the major areas of Kathy’s and Saculla’s conduct as was presented in the case. The ALJ concluded that “it is more likely than not that Dr. Saculla engaged in sexual activity with his patient, Kathy.” The ALJ recommended to the Board that Saculla’s license be revoked.

After oral arguments and based upon a review of the record, the Board adopted the proposed findings of fact and conclusions of law of the ALJ

in their entirety. The Board was unable to adopt the ALJ's recommendation to revoke Saculla's license because the requisite two-thirds of the Board's membership was not present. See § 15.08(4)(a) and (b), STATS. Instead, the Board fashioned a lesser punishment which fulfilled its disciplinary objectives of protecting the public, deterring other licensees from engaging in similar misconduct and promoting Saculla's rehabilitation. The Department filed a petition for a rehearing which the Board denied.

Thereafter, Saculla sought judicial review of the Board's final decision and order and the Board's order denying the Department's petition for a rehearing, pursuant to § 227.52, STATS. The trial court concluded that there was substantial evidence to support the Board's "overall decision and particularly the credibility of Kathy on her claim of sexual contact with [Saculla]." The trial court further concluded that Saculla's claims of privilege were not supported in fact or law and that Saculla was afforded full due process protections. Saculla appeals.

STANDARD OF REVIEW

In reviewing a circuit court's ruling on an administrative decision, we review the department's decision even though we affirm or reverse the court order. *Barakat v. DHSS*, 191 Wis.2d 769, 777, 530 N.W.2d 392, 395 (Ct. App. 1995). However, the circuit court's reasoning may be used to assist our review. *Richland Sch. Dist. v. DILHR*, 166 Wis.2d 262, 273, 479 N.W.2d 579, 584 (Ct. App. 1991), *aff'd*, 174 Wis.2d 878, 498 N.W.2d 826 (1993). The subsections of § 227.57, STATS., delineate the specific scope of both the trial court's and our

review of each issue presented by the parties. Saculla challenges the Board's decision under two of these provisions.

I. Sufficiency of the Evidence

Two of Saculla's arguments on appeal are that the evidence does not support the factual allegations in the complaint or the Board's decision. Saculla argues that the Board relied on only one witness, Kathy, who has given conflicting stories, recanted her complaint and "committed perjury," and the Board ignored Saculla's explanation of the events. Saculla further argues that the Board's decision is based upon "only two percent of the hearing testimony ... [and] ignores the testimony of many witnesses which supports but one conclusion—Saculla is innocent."

Whether a physician has engaged in behavior with a patient constituting unprofessional conduct is a question of fact to be determined by the board. See *General Casualty Co. v. LIRC*, 165 Wis.2d 174, 178, 477 N.W.2d 322, 324 (Ct. App. 1991). The board's factual findings are conclusive if they are supported by credible and substantial evidence. *Id.*; § 227.57(6), STATS. "Indeed, as long as there is credible evidence to support the findings, we will uphold them even if they are against the great weight and clear preponderance of the evidence." *General Casualty*, 165 Wis.2d at 178, 477 N.W.2d at 324 (citing *Goranson v. DILHR*, 94 Wis.2d 537, 554, 289 N.W.2d 270, 278 (1980)). Thus, "[w]here ... the credible evidence supporting the [board's] decision is sufficient to exclude speculation or conjecture, we may not overturn [that decision]." *Id.* at 179, 477 N.W.2d at 324.

In addition, the credibility of the witnesses and the persuasiveness of their testimony are for the board, not the courts, to determine. *L & H Wrecking Co. v. LIRC*, 114 Wis.2d 504, 509, 339 N.W.2d 344, 347 (Ct. App. 1983). In applying the credible evidence test to the findings of the agency, a reviewing court does not weigh conflicting evidence to determine which should be believed. *See id.* If there is credible evidence to sustain the findings, irrespective of whether there is evidence that might lead to the opposite conclusion, a court must affirm. *Id.*

However, the board is not required to justify its decision; the burden is on the challenger to show that the decision should be overturned. *Racine Educ. Ass'n v. Commissioner of Ins.*, 158 Wis.2d 175, 182, 462 N.W.2d 239, 242 (Ct. App. 1990). It follows that our role on appeal is to review the record for credible and substantial evidence supporting the board's decision, rather than to search for or weigh opposing evidence. *Kimberly-Clark Corp. v. LIRC*, 138 Wis.2d 58, 67, 405 N.W.2d 684, 688 (Ct. App. 1987).

Saculla urges this court, after reviewing the record—specifically, the evidence *he* finds most compelling—to overturn the Board's decision. However, we are not to weigh conflicting evidence to determine which should be believed. Rather, if there is credible evidence to sustain the findings, irrespective of whether there is evidence that might lead to the opposite conclusion, we must affirm. Review of the record leads us to conclude that there is substantial evidence to support the Board's findings.

The Board recognized that the central issue was Kathy's credibility. It had a difficult decision to make in this regard because it was faced with contradictions and conflicts in her testimony.¹ However, the Board was also required to consider Saculla's conduct in this incident. The Board determined that the sexual contact, the three at-home visitations by Kathy, the violation of MCMHC employment rules, the exchange of gifts, the cessation of discussions of "transference" with Kathy's mother and the ruse regarding Saculla's anatomy made it more likely than not that Kathy was being truthful. Saculla had the opportunity to explain away these actions; however, he chose not to testify. Although Saculla disagrees with the Board's conclusion, it is supported by credible and substantial facts in the record.

Moreover, it is clear from the Board's decision that it conducted the proper sifting and winnowing process to reach its final determination on credibility. In particular, the Board addressed the challenges to Kathy's credibility by the conflicting expert testimony; it considered Kathy's hesitancy to participate in the proceedings, as well as her "recantation" given to Saculla's investigator; it addressed Kathy's inconsistent statements regarding the number

¹ On March 5, 1993, Kathy left a note for Zwieg which expressed her concern that her testimony would not be used in her best interest and she therefore did not wish to continue with the matter. Nevertheless, the Department issued a complaint against Saculla on behalf of the Board on March 10, 1993. See *Sailer v. Wisconsin R.E. Brokers' Bd.*, 5 Wis.2d 344, 351, 92 N.W.2d 841, 845 (1958).

On April 22, 1993, Kathy gave a written statement to Saculla's private investigator. Kathy stated that due to her mental state at the time, she could not positively state that any sexual incident ever occurred. The Board found her testimony at the hearing, describing one sexual incident, to be truthful, and her contrary statement in the affidavit to be false. We accept the Board's credibility determination.

of sexual contacts; and it discussed Kathy's difficulties at work. Nevertheless, the Board concluded that:

[the discussion of Kathy's credibility] provide[s] the material basis upon which it is concluded that it is more likely than not that Dr. Saculla engaged in sexual activity with his patient, Kathy. ... Dr. Saculla's conduct and his subsequent taking of the Fifth Amendment make it likely that the encounter occurred, and serve to outweigh the difficulties in proof presented by Kathy's psychological problems, history and attempts to have this case dismissed.

These are the precise determinations—the credibility of the witnesses and the persuasiveness of their testimony—which are to be left to the Board, and not to the courts. Accordingly, we affirm the trial court's conclusion that “[s]ubstantial evidence does exist to support the [Board's] overall Decision and particularly the credibility of Kathy on her claim of sexual contact with [Saculla].”

II. Abuse of Discretion

Saculla's next argument is that the Board's decision in this case lacks the required reasoning process, as exemplified in other disciplinary cases, and constitutes an abuse of discretion. Saculla analogizes his case to a prior, unrelated Board decision which resulted in dismissal of the complaint against the other physician. Saculla theorizes that since “Kathy exhibited all of the symptoms and had the same diagnosis as the patient in their previous 1990 decision,” which was dismissed for lack of evidence, it follows that his case should also be dismissed.

However, this ignores the common precept that any judicial body is to consider each case on its own merits. See *Voigt v. State*, 61 Wis.2d 17, 22, 211 N.W.2d 445, 448 (1973) (it is presumed that the trial judge, in fidelity to his oath of office, will try each case on its merits). The administrative nature of these proceedings does not preclude application of this precept. The Board properly based its decision on the particular facts before it and not on previous disciplinary proceedings.

III. Board's Adverse Inferences

Saculla further contends that the Board erroneously drew adverse inferences from: (1) Saculla's refusal to testify prior to Kathy; and (2) Saculla's precomplaint request that Kathy be deposed and asked to describe his anatomy. Saculla contends that his refusal to testify was legally justified. He further argues that "Kathy's detailed description of [his] anatomy was inaccurate and supports the conclusion that the alleged oral sex did not occur" We conclude that the adverse inferences drawn by the Board are supported by law.

A. Saculla's Refusal to Testify

Saculla contends that his refusal to testify was legally justified. He maintains that: (1) the State had no right to call him adversely when the allegation involved alleged criminal conduct; (2) the Board had no right to draw an adverse inference from Saculla's refusal to testify based upon his Fifth Amendment right against self-incrimination; (3) under the physician-patient confidentiality requirements and § 905.04, STATS., he was precluded from testifying without a waiver by Kathy; and (4) the Board failed to consider all of

the evidence before drawing its adverse inference. Saculla's first two contentions are that Wisconsin law prohibits calling him adversely in a civil case when the allegation also involves a potential criminal violation and that an adverse inference may not be drawn against him for refusing to testify under the Fifth Amendment. These claims are unpersuasive.

Since the administrative disciplinary hearing was a civil proceeding and not a criminal proceeding, see *State v. Preston*, 38 Wis.2d 582, 588c, 159 N.W.2d 684, 685 (per curiam addendum to original case), *cert. denied*, 393 U.S. 981 (1968), the rules of criminal procedure are inapplicable. Moreover, the supreme court has held "that an inference of guilt or against interest of the witness may be drawn as a matter of law from the invocation of the fifth amendment in a civil suit. The inference which may be drawn depends upon the question asked and the weight to be given the inference depends upon the facts." *State v. Postorino*, 53 Wis.2d 412, 417, 193 N.W.2d 1, 3 (1972) (quoting *Grognet v. Fox Valley Trucking Serv.*, 45 Wis.2d 235, 239, 172 N.W.2d 812, 815 (1969)). Therefore, we must accept the findings of the Board, which include the adverse inferences taken from Saculla's refusal to respond to virtually all of the questions posed to him by the complainant's attorney. See *id.*

Saculla's third argument is that physician-patient confidentiality prohibited him from testifying. Saculla maintains that his refusal to testify under the physician-patient privilege is justified based upon Kathy's original medical release authorization which expired on December 31, 1991, and Kathy's

notice of withdrawal to the state's attorney, which was formalized in an April 22, 1993, sworn statement. We disagree.

The physician-patient privilege is codified under § 905.04(2), STATS., which provides in part: "A patient has a privilege ... to prevent any other person from disclosing confidential communications made or information obtained ... for purposes of diagnosis or treatment of the patient's physical, mental or emotional condition" A privilege holder waives the privilege if he or she voluntarily discloses or consents to disclosure of any significant part of the matter or communication. Section 905.11, STATS. Accordingly, if Kathy, as the holder of the privilege, voluntarily consented to the inspection of any given medical record by the Board, then she waived the patient privilege under § 905.04 as to that record. See *Borwardt v. Redlin*, 196 Wis.2d 342, 354-55, 538 N.W.2d 581, 586 (Ct. App. 1995).

Kathy signed a second consent for release of information authorizing Saculla to provide all members of the Board and the Department with any medical records in his possession or under his control, including but not limited to mental health/psychiatric treatment records pertaining to Kathy. The release also authorized Saculla to discuss with the Board or Department any matters relating to Kathy's treatment. The release was effective until December 31, 1993, and any information obtained as a result of the consent could be used after the expiration date or revocation.

We conclude, as did the Board, that Kathy's authorization constituted a valid waiver of her physician-patient privilege with Saculla

through the expiration date. Saculla's testimony was taken on November 15, 1993, well within the expiration of the authorization. At the hearing, the parties presented arguments regarding the validity of the waiver and the Board concluded that the authorization "establish[ed] ... that the patient-physician privilege [was] waived," and so found "for the purpose of permitting Dr. Saculla to testify in this matter."

Saculla still refused to testify throughout the hearing, but his refusal was not based upon the physician-patient privilege. In fact, Saculla never invoked this privilege throughout the hearing and the Board did not draw an adverse inference from Saculla's argument that the physician-patient privilege barred his testimony.

Instead, Saculla invoked the Fifth Amendment to all of counsel's questions. An inference of guilt may be drawn as a matter of law from the invocation of the Fifth Amendment in a civil suit and the weight to be given the inference depends upon the facts. See *Postorino*, 53 Wis.2d at 417, 193 N.W.2d at 3. Here, the Board drew an adverse inference from Saculla's invocation of the Fifth Amendment, which when combined with Saculla's conduct "[made] it more likely Kathy is telling the truth" The Board was entitled to draw this adverse inference and we must defer to the Board's determination of the credibility of the witnesses and the persuasiveness of their testimony. *L & H Wrecking*, 114 Wis.2d at 509, 339 N.W.2d at 347.

Lastly, Saculla argues that the Board failed to consider his "ongoing cooperation with State officials dating back to 1990, and failed to

consider [his] sworn deposition testimony, the waiver of his attorney/client privilege and the testimony of Judge Harvey.” Saculla again urges this court to reexamine the Board’s factual findings and its determinations of the witnesses’ credibility. The Board's factual findings are conclusive if they are supported by credible and substantial evidence. Section 227.57(6), STATS. In addition, the credibility of the witnesses and the persuasiveness of their testimony are for the Board to determine, not the court. *L & H Wrecking*, 114 Wis.2d at 509, 339 N.W.2d at 347. In applying the credible evidence test to the findings of the agency, we do not weigh conflicting evidence to determine which should be believed. *See id.* If there is credible evidence to sustain the finding, irrespective of whether there is evidence that might lead to the opposite conclusion, we must affirm. *See id.* The Board’s decision is supported by credible evidence and we therefore affirm.

B. Request for Anatomical Description by Kathy

Saculla maintains that the Board erroneously drew an adverse inference from his request in February 1993 that Kathy be deposed and asked to describe his genitalia. The controversy is that Kathy filed her allegations with MCMHC in March 1990. On March 12, 1991, a circumcision was performed on Saculla. The medical records indicated that Saculla complained of “a decrease in the force and caliber of his stream, ... phimosis [a stricture of the foreskin which reduces its elasticity] and occasional ballanitis [an inflammation of the mucous membrane covering the glans penis] and he would like a circumcision.”

Yet, the surgeon's notes prior to and during the operation indicated that everything was normal.

The problem for the Board was that the surgery, which was performed upon Saculla after the alleged misconduct, resulted in the removal of the foreskin from his penis and "obviously would have altered at least its flaccid appearance from that which possibly would have been observed in late 1989 by Kathy." Therefore, Kathy's physical description of Saculla's penis would have been inconsistent with its actual condition in 1993. The Board noted that: [f]rom the medical records, then, there does not appear to have been any objective or observable confirmation of the presenting complaints of Dr. Saculla. This does not necessarily mean, although it could be reasonably inferred from this record, that Dr. Saculla simply desired to have the foreskin of his penis removed for some reason other than an existing legitimate medical cause.

The Board concluded that Saculla's demand to the state in 1993 that Kathy be required to describe his genitals, as she would have observed them in 1989, was deceitful given the surgical procedure which had been performed in the interim. To the extent she would be able to testify to his not having been circumcised, she would be lying. Although, Dr. Saculla's attempt at deception was not successful, it is extremely damaging to his position.

The Board determined that without clarification from Saculla himself (Saculla chose not to testify pursuant to his Fifth Amendment constitutional right against self-incrimination), it is reasonable to draw an adverse inference from the evidence of record.

The Board's factual findings are conclusive if they are supported by credible and substantial evidence. Section 227.57(6), STATS. The board is not required to justify its decision; the burden is on the challenger to show that the decision should be overturned. *Racine Educ. Ass'n*, 158 Wis.2d at 182, 462 N.W.2d at 242. It follows that our role on appeal is to review the record for credible and substantial evidence supporting the board's decision, rather than to search for or weigh opposing evidence. *Kimberly-Clark*, 138 Wis.2d at 67, 405 N.W.2d at 688.

Saculla contends that the Board "misunderstood critical evidence." He argues that the Board based its adverse inference upon the "State's closing argument and the testimony of Mr. Nash," as well as upon the Board's misunderstanding that Saculla "had undergone a circumcision in the month following his February 1993, meeting with Jack Zwieg and that this operation had been done to change his anatomy and thereby to 'deceive them.'" These arguments ignore not only the Board's decision, but also our role on review.

It is clear that the Board mainly drew its adverse inference from Saculla's medical records which were submitted at the hearing. On appeal, our role is to review the record for credible and substantial evidence supporting the Board's decision, rather than to search for or weigh opposing evidence. The only evidence brought before the Board provides support for the adverse inference taken. Saculla has failed to demonstrate why we should overturn the Board's decision. Accordingly, we affirm.

IV. Due Process

Saculla's final argument is that he was deprived of due process. Section 227.57(4), STATS., provides in part: "The court shall ... remand the case to the agency for further action if it finds that ... the fairness of the proceedings ... has been impaired by a material error in procedure or a failure to follow prescribed procedure."

Saculla claims that the Board violated his right to due process in two respects. First, the Board did not give him fair notice and an opportunity to be heard with respect to his conduct. Second, the Board limited his license despite its inability to obtain the required two-thirds vote of the majority membership pursuant to § 15.08(4), STATS.

A. The Right to Notice and an Opportunity to be Heard

This issue involves a question of constitutional fact which we review without deference to the agency. *Hakes v. LIRC*, 187 Wis.2d 582, 586, 523 N.W.2d 155, 157 (Ct. App. 1994). Our supreme court has delineated due process of law in agency proceedings as follows:

[D]ue process ... requires notice of hearing and description of the issue, the right to present witnesses and cross-examine. ... [F]indings of fact and conclusions of law must be made. And equally important, the standard of review is substantial evidence in view of the record as a whole. ... While due process must be extended ... this does not mean that all of the procedural niceties of a judicial trial must be observed.

Kropiwka v. DILHR, 87 Wis.2d 709, 714, 275 N.W.2d 881, 884, *cert. denied*, 444 U.S. 852 (1979) (quoted sources omitted; citations omitted). In addition, there is

a presumption of regularity in the decisions of administrative agencies, and the petitioner has the burden of establishing that his or her right to due process of law was violated. *See Hakes*, 187 Wis.2d at 586-87, 523 N.W.2d at 157.

Saculla has failed to demonstrate that the Board violated his due process rights. Rather, it is clear that Saculla was provided with “all of the procedural niceties” of a judicial trial—notice of the hearings and the charges against him; the right to counsel; the right to present and to cross-examine witnesses; the right to be present during the hearing; the right to testify or remain silent; the right to written and detailed findings of fact and conclusions of law; the application of the appropriate standard; and the right to appeal. As noted by the trial court, “[Saculla] didn’t get the result he sought, but he did receive full due process.” We conclude that Saculla has failed to establish that his constitutional due process rights were violated during the medical board hearings.

B. Violation of § 15.08(4), STATS.

Saculla also argues that because the Board was unable to obtain the required two-thirds vote of its membership, under § 15.08(4), STATS., it was obligated to dismiss the complaint. This argument is without merit.

The general powers of examining boards and councils allow the board to “limit, suspend or revoke, or reprimand the holder of, any license, permit or certificate granted by the examining board.” Section 15.08(5)(c), STATS. Section 15.08(4) requires:

- (a) A majority of the membership of an examining board constitutes a quorum to do business, and a majority of a quorum may act in any matter within the jurisdiction of the examining board.
- (b) Notwithstanding par. (a), no certificate or license which entitles the person certified or licensed to practice a trade or profession shall be suspended or revoked without the affirmative vote of two-thirds of the membership of the examining board.

Based upon the restrictions in § 15.08(4), STATS., the Board imposed the following limitations on Saculla's license: (1) prohibited the treatment of females of any age; (2) direct on-premises supervision by another physician; (3) submit written quarterly reports prepared by practice supervisor; (4) arrange for a psychological evaluation relating to the issues raised in the Board's findings of fact; (5) if psychotherapy is deemed necessary, to submit written quarterly reports prepared by the treating psychiatrist; and (6) provide current authorizations for release of all of his medical and treatment records to the Board. Through these limitations, the Board was attempting to fulfill the accepted disciplinary objectives of protecting the public, deterring other licensees from engaging in similar misconduct, and promoting Saculla's rehabilitation. The Board's explanations for these conditions are reasonable, and clearly, § 15.08 allows for such limitations.

Moreover, Saculla has not articulated how the limitations to his license relate to his alleged denial of due process. Because this argument is undeveloped, we decline to consider it further. *See Fritz v. McGrath*, 146

Wis.2d 681, 686, 431 N.W.2d 751, 753 (Ct. App. 1988) (appellate court does not consider arguments “broadly stated but never specifically argued”).

CONCLUSION

In sum, we conclude that substantial evidence exists to support the Board’s decision and particularly the credibility of Kathy on her claim of sexual contact with Saculla. We further determine that the Board’s decision did not constitute a misuse of discretion. We also hold that the adverse inferences drawn by the Board are supported in both law and fact. We further conclude that Saculla’s constitutional due process rights were not violated during the medical board hearings or by the Board’s limitations on Saculla’s license. Accordingly, we affirm the trial court’s order affirming the Board’s limitation of Saculla’s medical license based upon the Board’s finding that Saculla engaged in unprofessional conduct, in violation of § 448.02(3), STATS., and WIS. ADM. CODE § MED. 10.02(2)(h), by having sexual contact with a patient.

By the Court. – Order affirmed.

Not recommended for publication in the official reports.