

HEALTH CARE PROVIDER ALERT

4/16/18

Should a “Sister” State Necessarily Impose the Same Professional Discipline Against a Medical Practitioner That Another State Imposes?

By [Michael Brohman](#), Shareholder

The Professional Practice Acts for many states routinely have provisions that permit a state to discipline a medical practitioner if that practitioner has been disciplined by another state in which the practitioner is also licensed. These kinds of provisions are normally referred to as “sister-state” provisions. But, should a state necessarily impose the very same professional discipline that was previously imposed by another state? In the recent decision of *LaBrot v. Illinois Department of Financial and Professional Regulation, et al.*, 2018 Ill. App. 4th 160938-U (Jan. 2018), the Illinois Appellate Court for the Fourth District answered this question by saying no. Indeed, given the mitigating circumstances that existed in the case, the Court ruled that a state’s discipline that “mirrored” the sanction imposed in another state was “overly harsh” and it vacated that discipline.

The plaintiff in the *LaBrot* case was a Kentucky licensed chiropractor who entered into a consent order with the Kentucky Licensing Board for violating statutory and administrative provisions related to his Kentucky license. The violations pertained to Dr. LaBrot’s alleged act of reviewing a chiropractic file of another chiropractor’s patients despite the fact that he was not registered with the Kentucky Board to perform peer reviews of other chiropractors. The Kentucky Board imposed a reprimand against Dr. LaBrot and fined him \$1,000.

Apart from his Kentucky license, Dr. LaBrot had been licensed in Illinois since 1981, and, as he was required to do, he notified Illinois’ Department of Financial and Professional Regulation (“IDFPR”) of the discipline imposed against him by the Kentucky Board. The IDFPR initiated a disciplinary action against Dr. LaBrot pursuant to the “sister-state” provision contained in Illinois’ Practice Act. After a hearing, the IDFPR imposed the very same discipline against Dr. LaBrot as Kentucky had imposed - a reprimand and a \$1,000 fine. The IDFPR’s discipline was thereafter affirmed by the Circuit Court of Cook County on Dr. LaBrot’s claim for administrative review.

However, the Illinois Appellate Court reversed the findings of the IDFPR and the Circuit Court. The Court rejected the IDFPR’s claim that the Appellate Court had to defer to the IDFPR on the question of the severity of discipline. Instead, the Court ruled that it did not have to defer to an IDFPR discipline if the discipline was “overly harsh.” Viewing the mitigating circumstances that Dr. LaBrot presented, the Court ruled that the discipline imposed by the IDFPR was “overly harsh.” Among these mitigating circumstances were the fact that Dr. LaBrot, in his 36-year career as a licensed Illinois chiropractor, had never been accused of any poor patient treatment issues, had never had his privileges to practice restricted or modified, and had never been the subject of a malpractice suit. With respect to the issues in the Kentucky case, the Court noted evidence suggesting that Dr. LaBrot had inadvertently violated the Kentucky statute, that Dr. LaBrot had promptly addressed and corrected the violation, and that no harm to any patient was alleged. The Court rejected the IDFPR’s stated aggravating factors for the discipline, such as Dr. LaBrot’s alleged lack of contrition and the recent nature of his Kentucky violation.

Importantly, the Court also rejected the IDFPR’s claim that its “mirrored” discipline was consistent with the purpose of Illinois’ Practice Act “to protect the public health and welfare from individuals not qualified to practice medicine.” The Court noted that a further sanction by Illinois was unnecessary to inform the Illinois public of Dr. LaBrot’s failure to comply with Kentucky requirements since information about his Kentucky discipline was already publicly available. Because Dr. LaBrot’s Kentucky violation did not cause harm to any

patients, the Court further held that “any additional sanction against Dr. LaBrot would not serve the purpose of protecting the health and welfare of Illinoisans.” Nevertheless, the Court also stated that it was not creating a rule that the IDFPR “may not impose sanctions for violation of sister-state rules and regulations or sanctions that mirror those imposed by the sister state.” Instead, it held that, in view of Dr. LaBrot’s particular situation, the Illinois discipline should be set aside as being overly harsh and arbitrary.

The **LaBrot** decision is important because it tells medical practitioners licensed in multiple states that they do not necessarily have to accept an additional state discipline that “mirrors” the discipline imposed by another state. The decision provides a nice outline of the kinds of arguments that, if the circumstances warrant, can be made to defeat additional discipline.

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Ericka Adler, Manager
eadler@ralaw.com

Christina Kuta
ckuta@ralaw.com

Michael Brohman
mbrohman@ralaw.com

Lee Levin
Llevin@ralaw.com

Avery Delott
adelott@ralaw.com

John Waters
jwaters@ralaw.com

David Hochman
dhochman@ralaw.com