

SHARMILA DAS-WATTLEY

v.

BOARD OF PODIATRIC MEDICINE

Argued June 14, 2018

Decided July 3, 2018

Panel: SAUFLEY, C.J., and ALEXANDER, MEAD, GORMAN, JABAR, HJELM, and HUMPHREY, JJ.

MEMORANDUM OF DECISION

Sharmila Das-Wattley appeals from a judgment of the Superior Court (Kennebec County, *Murphy, J.*) entered on Das-Wattley's M.R. Civ. P. 80C petition for review, affirming a decision of the Board of Podiatric Medicine finding that Das-Wattley committed gross negligence and violated the applicable standard of practice in podiatry and sanctioning Das-Wattley by censure and to a two-year period of probation. *See* 5 M.R.S. § 11001 (2017); 10 M.R.S. § 8003(5-A) (2017).

Das-Wattley primarily contends that her rights were violated when a Board member, who did not sit in adjudication of this matter, served as an expert witness on behalf of the prosecution. Das-Wattley did not raise any challenge to the expert's testimony at the administrative hearing. Her prehearing request for documentation of the expert's qualifications did not provide the hearing officer an opportunity to address Das-Wattley's current contention that the Board could not maintain impartiality while considering the testimony of a fellow member. The court therefore did not err in concluding that Das-Wattley is precluded from raising the issue of the expert witness's

relationship to the Board on appeal. *See Forest Ecology Network v. Land Use Regulation Comm'n*, 2012 ME 36, ¶ 24, 39 A.3d 74.

Regarding Das-Wattley's remaining arguments, the Board did not abuse its discretion when it imposed probationary measures that were tailored to its findings, *see* 10 M.R.S. §§ 8003(5-A)(B)(6), 8008 (2017); the Board's reliance on expert testimony to establish the applicable standard of practice did not deprive Das-Wattley of notice and an opportunity to be heard, *see Balian v. Bd. of Licensure in Med.*, 1999 ME 8, ¶ 15, 722 A.2d 364; and there is sufficient evidence in the record to support the Board's finding that Das-Wattley committed gross negligence and violated the applicable standard of practice when she failed to refer her patient for a neurological consultation, *see Friends of Lincoln Lakes v. Bd. of Env't'l Prot.*, 2010 ME 18, ¶ 14, 989 A.2d 1128.

The entry is:

Judgment affirmed.

Maureen M. Sturtevant, Esq. (orally), and Philip M. Coffin III, Esq., Lambert Coffin, Portland, for appellant Sharmila Das-Wattley

Janet T. Mills, Attorney General, and Samantha Y. Morgan, Asst. Atty. Gen. (orally), Office of the Attorney General, Augusta, for appellee Board of Podiatric Medicine