

CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

MORELLA BOMBARDINI,
Plaintiff and Appellant,

v.

BOARD OF PSYCHOLOGY,
Defendant and Respondent.

C104172

(Super. Ct. No. 24WM000096)

APPEAL from a judgment of the Superior Court of Sacramento County, Jennifer K. Rockwell, Judge. Affirmed.

Law Office of Elliott N. Kanter and Elliott N. Kanter for Plaintiff and Appellant.

Rob Bonta, Attorney General, Gloria L. Castro, Assistant Attorney General, Michael C. Brummel, Matthew Fleming and Latrice Hemphill, Deputy Attorneys General, for Defendant and Respondent.

Morella Bombardini is a licensed psychologist. In 2021, the Board of Psychology placed her on probation for five years, and in 2024, it denied her petition for early termination of probation. Bombardini challenged both the 2021 and the 2024 decisions by petition for writ of mandate. The trial court denied the petition in its entirety, finding any challenge to the 2021 decision was untimely and the 2024 decision was supported by

* Pursuant to California Rules of Court, rules 8.1105 and 8.1110, this opinion is certified for publication with the exception of parts II, III, and IV of the Discussion.

the evidence. Bombardini appeals and we affirm.

LEGAL BACKGROUND

We begin by reviewing the legal background relevant to the licensing of psychologists, to set the stage for the factual and procedural background that follows.

The practice of psychology in California is governed by the Psychology Licensing Law (Bus. and Prof. Code, § 2900 et seq.), which is enforced and administered by the Board of Psychology (Board). (Bus. & Prof. Code, §§ 2901, 2920.) In order to engage in the practice of psychology, a person must be licensed by the Board, and the Board also oversees discipline of licensed psychologists. (Bus. & Prof. Code, §§ 2903, 2931, 2940, 2948.) In exercising its licensing and disciplinary authority, “Protection of the public shall be the highest priority for the Board,” and “[w]henever protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.” (Bus. & Prof. Code, § 2920.1.)

The Board may revoke, suspend, or discipline a license if a licensee “has been guilty of unprofessional conduct,” which includes (1) “[c]onviction of a crime substantially related to the qualifications, functions or duties of a psychologist” and (2) “[u]sing fraud or deception in applying for a license.” (Bus. & Prof. Code, § 2960, subds. (a), (e).) A crime “involving fiscal dishonesty” “shall be considered to be substantially related to the qualifications, functions, or duties of a person holding a license ... under to the Psychology Licensing Law.” (Cal. Code Regs., tit. 16, § 1394.) “A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge which is substantially related to the qualifications, functions and duties of a psychologist ... is deemed to be a conviction within the meaning of this article ... irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw their plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.” (Bus. &

Prof. Code, § 2963.)

Because psychologists are considered health care professionals (see Bus. & Prof. Code, §§ 810, subd. (d), 2900-2919), they are also subject to discipline pursuant to Business and Professions Code section 810, which provides, “It shall constitute cause for revocation or suspension of a license ... for a health care professional to engage in any conduct prohibited under Section 1871.4 of the Insurance Code.” Section 1871.4 of the Insurance Code makes it a crime to “[m]ake or cause to be made a knowingly false or fraudulent material statement or material representation for the purpose of obtaining” workers’ compensation benefits.

The Board’s disciplinary proceedings are conducted in accordance with the formal hearing procedures of the Administrative Procedure Act (Gov. Code, § 11500 et seq.). (Bus. & Prof. Code, § 2965.) A disciplinary proceeding is instituted by the filing of an accusation, which is subject to certain time limits, and the licensee is entitled to an evidentiary hearing on the merits of the accusation. (Bus. & Prof. Code, § 2960.05; Gov. Code, § 11506.) Following the hearing, the Board may “suspend, revoke, or impose probationary conditions upon[] a license.” (Bus. & Prof. Code, § 2961.)

“A person whose license ... has been revoked, suspended, or surrendered, or who has been placed on probation, may petition the board for reinstatement or modification of the penalty, including modification or termination of probation.” (Bus. & Prof. Code, § 2962, subd. (a).) When the person seeks modification or early termination of probation of three years or more, the petition may be filed no earlier than two years after the effective date of the decision ordering probation. (*Id.*, subd. (b)(2).) At the hearing on a petition for modification or termination of probation, “The petitioner shall at all times have the burden of production of proof to establish by clear and convincing evidence that they are entitled to the relief sought in the petition.” (*Id.*, subd. (d).)

The Board has adopted “Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees” (hereafter Disciplinary Guidelines) and has also

promulgated a regulation incorporating the Disciplinary Guidelines and requiring it to consider and apply them when making disciplinary decisions, including decisions on penalty modification or relief.¹ (Cal. Code Regs., tit. 16, § 1395.2, subd. (a).) The Disciplinary Guidelines provide that one of the “primary concerns of the Board at reinstatement or penalty relief hearings” is “the evidence presented by the petitioner of his/her rehabilitation. The Board will not retry the original revocation or probation case.” (Board of Psychology, Disciplinary Guidelines (amended Apr. 2015) § V <https://www.psychology.ca.gov/laws_regs/dg_order.pdf> [as of Oct. 6, 2026].) The Disciplinary Guidelines further provide, “Rehabilitation is evaluated according to an internal subjective measure of attitude (state of mind) and an external objective measure of conduct (state of facts). The state of mind demonstrating rehabilitation is one that has a mature, measured appreciation of the gravity of the misconduct and remorse for the harm caused. Petitioner must take responsibility for the misconduct and show an appreciation of why it is wrong. Petitioner must also show a demonstrated course of conduct that convinces and assures the Board that the public would be safe if petitioner is permitted to be licensed to practice psychology. Petitioner must show a track record of reliable, responsible, and consistently appropriate conduct.” (*Ibid.*)

Judicial review of the Board’s disciplinary decisions may be had by filing a petition for writ of mandate pursuant to Code of Civil Procedure section 1094.5. (Bus. & Prof. Code, § 2965; Gov. Code, § 11523.) The petition must be filed within 30 days after the last day on which reconsideration can be ordered. (Gov. Code, § 11523.) The last day on which reconsideration can be ordered is generally 30 days after the decision is

¹ The Disciplinary Guidelines are available at <https://www.psychology.ca.gov/laws_regs/dg_order.pdf> (as of Oct. 6, 2026), archived at <<https://perma.cc/5HSL-59GF>>. The relevant portion is also quoted in the Board’s decision denying the petition for early termination of probation.

delivered or mailed to the petitioner or the date the agency sets as the effective date of the decision. (Gov. Code, § 11521, subd. (a).)

With this legal background in mind, we turn to the facts in this case.

FACTUAL AND PROCEDURAL BACKGROUND

The Board issued Bombardini a psychologist license in 2011.

In December 2019, the Board filed an accusation against Bombardini seeking to discipline her on two separate grounds: (1) she was convicted in 2018 of violating Insurance Code section 1871.4; and (2) she was dishonest when she applied for her license because she failed to disclose a 1984 conviction for writing a check with insufficient funds. Bombardini challenged the accusation, and a two-day evidentiary hearing was held in mid-2020. Bombardini represented herself.

The Board issued a written decision following the hearing. As to the second cause for discipline, it made the following findings. Bombardini was convicted in 1984 of writing a check with insufficient funds. In 2007, she submitted an application for licensure to the Board that asked the following question: “Omitting minor traffic violations, have you ever been convicted of, or pled guilty or nolo contendere to any violation of any federal or state statute, city or county ordinance, or law of a foreign country? This includes all misdemeanor and felony convictions. (Any conviction that was subsequently dismissed pursuant to Penal Code 1203.4 must also be disclosed.)” Bombardini marked the box labeled “No” in response to this question, and this “response was false in light of her 1984 conviction for writing a check with insufficient funds.” After Bombardini submitted her “initial application that falsely indicated she had never been convicted of a crime, Board staff received contradictory information in its background check. As [a] result, the Board sent a letter to [Bombardini] asking her for documents pertaining to the conviction.” Although it was not clear what documents she provided in response, it was undisputed that the Board was aware of Bombardini’s 1984

conviction when it issued her a license in 2011. Based on these findings, the Board dismissed the second cause for discipline, explaining, “With knowledge of this conviction, the Board nonetheless issued a Psychologist license to [Bombardini] in 2011. Therefore, the Board cannot and should not discipline [her] for procuring a license by fraud or misrepresentation. Therefore, the second charge in the Accusation is dismissed.”

As to the first cause for discipline, the Board found, “On November 4, 2018, [Bombardini] was convicted in the Superior Court of California, County of Los Angeles, pursuant to her plea of nolo contendere, of a misdemeanor violation of Insurance Code section 1871.4, subdivision (a)(1), a crime involving fiscal dishonesty.” (Fn. omitted.) “The facts and circumstances of the offense are that [Bombardini] made a fraudulent workers’ compensation claim in connection [with] her employment as a psychologist. The Superior Court’s minute order reflects that the incident occurred on or about July 11, 2014. The criminal complaint originally alleged three felony counts.” Bombardini was ordered to perform community service and pay over \$11,000 in restitution to her employer. The conviction was dismissed in 2019 pursuant to Penal Code section 1203.4.

The Board found cause existed to discipline Bombardini based on her conviction for violating Insurance Code section 1871.4, pursuant to both (1) Business and Professions Code section 2960 and title 16, section 1394 of the California Code of Regulations (which provide the Board may discipline a psychologist for “[c]onviction of a crime substantially related to the qualifications, functions or duties of a psychologist,” including a crime “involving fiscal dishonesty”), and (2) Business and Professions Code section 810 (which provides a health care professional may be disciplined for engaging in conduct prohibited by Ins. Code, § 1871.4). The Board revoked Bombardini’s license, stayed the revocation, and placed her on probation for five years subject to terms and conditions, including obtaining a practice and billing monitor to evaluate her performance and provide written reports to the Board; passing the California Psychology Law and Ethics Examination; completing a law and ethics course; completing at least 12 hours a

year of other coursework in areas directed by the Board; reimbursing the Board \$5,767.49 for its investigation and enforcement costs; and submitting quarterly reports to the Board. The decision also provided that if Bombardini either left California or was not engaged in the practice of psychology for more than 30 days while residing in California, “All provisions of probation other than the quarterly report requirement, and the coursework requirement, shall be held in abeyance until [she] resumes practice in California” and “the term of probation shall be extended for the period of time [she] was out of state” or “was not engaged in the practice of psychology.” The effective date of the decision was April 23, 2021, and, as will be discussed below, Bombardini did not timely challenge it.

Shortly before the decision went into effect, Bombardini notified the Board she was moving to Maryland “permanently.” In or around April 2022, she notified the Board she had moved to Oregon. She applied for a license to practice psychology in both Maryland and Oregon, but the applications were denied.

Sometime in 2023, Bombardini moved back to California, and in July, she filed a petition for early termination of her probation. A one-day evidentiary hearing was held before the Board in early 2024. Bombardini represented herself and was the only witness. Much of her testimony related to her 1984 conviction and her failure to disclose the conviction when she applied for licensure. On cross-examination, she was asked whether she was aware her discipline had nothing to do with the 1984 conviction and was based solely on the 2018 conviction, and she responded, “No. ... That is all news to me.”

She briefly addressed the events leading up to the conviction for workers’ compensation fraud. She testified, “I applied for workers’ compensation because a lot of people at Kaiser Permanente quit, and I did that as well. I quit Kaiser because I was in severe pain, and I heard that they had a really good physical therapy for your hands, which the doctor had wanted me to do surgery, but after doing some research, it shows that therapy really doesn’t work. I mean, surgery doesn’t work, that therapy did. So I did

apply for that, and I totally regret it, but it has never been my intention to defraud anyone.” She was asked about a deposition that was taken in her workers’ compensation case, and she testified, “The way it was explained by my attorney is that during the deposition ... , they said that I lied about not having carpal tunnel, and that’s what I’m here to demonstrate as well, that I did have carpal tunnel, that during this deposition there were many times that I said I did not recall, which I did not.” She testified she understood she was convicted for insurance fraud, but she explained, “I didn’t really have good attorneys unfortunately.” When asked whether she pled no contest to the charge, she answered, “They [i.e., her attorneys] told me to, which unfortunately I did, and I didn’t really understand [*sic*] exactly what that meant.”

Although Bombardini testified she took “100 percent full responsibility” for her actions, she also testified, “I am not a criminal, but I really feel like I’m being treated as one.” “I have really paid the price with having taken my dream from childhood of becoming a psychologist. It has been the punishment of a lifetime not being able to work as a psychologist and help people that I’d love to help. So it really does feel like I’m in prison, and I am in a financial dire need to get back to work.”

Following the hearing, the Board issued a decision denying the petition for early termination of probation. It found Bombardini failed to present clear and convincing evidence of rehabilitation, which it defined as a state of mind that requires an appreciation of the gravity of, and acceptance of responsibility for, the misconduct, and remorse for the harm caused. The Board found Bombardini was missing this state of mind. Instead of accepting responsibility for the misconduct underlying her conviction, she testified she was not a criminal, she was being unfairly punished, and she pled no contest to insurance fraud based on the advice of her attorney because she did not know what was going on. She also insisted she did in fact suffer from carpal tunnel syndrome, which is the injury for which she sought workers’ compensation benefits. The Board also noted her probation had been tolled since the 2021 decision went into effect because she

had moved out of state and she had not practiced psychology since returning to California. She thus had not complied with the probation conditions that were “intended to ensure her continued ability to practice psychology in a manner consistent with public health, safety, and welfare,” including passing the California Psychology Law and Ethics Examination and obtaining a practice monitor to evaluate her practice and report to the Board. The Board concluded, “It is too soon to allow [her] to practice psychology without Board oversight.” The effective date of the decision was May 23, 2024.

Bombardini, once again representing herself, filed a petition for writ of mandate pursuant to Code of Civil Procedure section 1094.5 asking the court to set aside both the Board’s 2021 decision placing her on probation and its 2024 decision denying her petition for early termination of probation. The court denied the petition in its entirety, finding Bombardini’s attempt to challenge the 2021 decision was untimely and the 2024 decision was supported by substantial evidence. This appeal followed.

DISCUSSION

I. The Trial Court Properly Applied the Substantial Evidence Test

Bombardini argues the trial court applied the wrong standard of review to the Board’s factual findings. We disagree.

When an administrative decision is challenged by petition for writ of mandate, the inquiry includes whether there was a prejudicial abuse of discretion, and “[a]buse of discretion is established if ... the findings are not supported by the evidence.” (Code Civ. Proc., § 1094.5, subd. (b).) In determining whether the findings are supported by the evidence, the trial court applies one of two tests: (1) the independent judgment test, or (2) the substantial evidence test. (Code Civ. Proc., § 1094.5, subd. (c); *Nathan G. v. Clovis Unified School Dist.* (2014) 224 Cal.App.4th 1393, 1403.) Under the independent judgment test, “the trial court must exercise its independent judgment on the evidence; the trial court must weigh the evidence and determine whether the administrative findings

are supported by the weight of the evidence.” (*Amerco Real Estate Co. v. City of West Sacramento* (2014) 224 Cal.App.4th 778, 782-783.) Under the substantial evidence test, “the trial court considers only whether the administrative findings are supported by substantial evidence in light of the whole record.” (*Id.* at p. 783.) The substantial evidence test is thus more deferential to the agency’s findings than the independent judgment test.² (See *Li v. Superior Court* (2021) 69 Cal.App.5th 836, 848.)

The trial court appears to have applied the substantial evidence test, because it stated the following when discussing the standard of review: “ ‘If a finding is supported by substantial evidence, [the trial court] may not disregard or overturn it merely because a contrary finding would have been equally or more reasonable.’ ” Bombardini argues the trial court should have applied the independent judgment test. “[W]hether the trial court applied the correct standard in reviewing the administrative record is a question of law, which we review de novo.” (*Land v. California Unemployment Ins. Appeals Bd.* (2020) 54 Cal.App.5th 127, 140.)

Which test applies depends on whether the challenged decision “affects a fundamental vested right.” (*Amerco Real Estate Co. v. City of West Sacramento, supra*, 224 Cal.App.4th at p. 782.) If it does, then the independent judgment test applies; if it does not, then the substantial evidence test applies. (*Id.* at pp. 782-783.) The determination of whether a particular decision affects a fundamental vested right must be made “ ‘ ‘ ‘on a case-by-case basis.’ ” ” (*Id.* at p. 783.) “A right may be deemed fundamental ‘on either or both of two bases: (1) the character and quality of its economic aspect; (2) the character and quality of its human aspect.’ ” (*Ibid.*) And a right is

² Regardless of which test applies, however, the court “must afford a strong presumption of correctness concerning the administrative findings, and the party challenging the administrative decision bears the burden of convincing the court that the administrative findings are contrary to the weight of the evidence.” (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 817.)

considered “ ‘vested’ ” if it “is either ‘already possessed’ [citation] or ‘legitimately acquired’ [citation].” (*Berlinghieri v. Department of Motor Vehicles* (1983) 33 Cal.3d 392, 396.)

As Bombardini accurately notes, it is well established that “an individual, having obtained the license required to engage in a particular profession or vocation, has a ‘fundamental vested right’ to continue in that activity.” (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 788-789.) Accordingly, “ ‘if a person’s license to practice that profession is *revoked* by an administrative agency, when a petition for a writ of mandate is brought for restoration of the license, the trial court must apply its independent judgment to its review of the facts underlying the administrative decision.’ ” (*Lam v. Bureau of Security & Investigative Services* (1995) 34 Cal.App.4th 29, 35, italics added.) The independent judgment test also applies when an agency “imposes discipline on a professional licensee” short of revocation. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 767; see also *Watson v. Superior Court* (2009) 176 Cal.App.4th 1407, 1412 [applying independent judgment test to decision placing physician on probation].)

It is also well established that “[i]n cases involving *applications* for a [professional] license, the courts have largely deferred to the administrative expertise of the agency,” and will uphold an agency’s initial determination regarding “whether an individual qualifies to enter a profession ... unless it lacks substantial evidentiary support.” (*Bixby v. Pierno* (1971) 4 Cal.3d 130, 146, italics added; see also *Unterthiner v. Desert Hospital Dist.* (1983) 33 Cal.3d 285, 298 [“substantial evidence review applies to decisions denying initial applications for hospital privileges”].)

Finally, it is well established “that a person seeking *restoration of a revoked license* has no greater rights than a person seeking an original license,” and the trial court applies the substantial evidence test when reviewing a decision to deny a person’s petition for restoration. (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d

308, 312, italics added; see also *Crandell v. Fox* (1978) 86 Cal.App.3d 760, 763 [“applicant for reinstatement of a license ‘has no greater rights than a person seeking an original license’ ”].)

This case does not fit squarely into any of these three situations. Bombardini is challenging an order denying her petition for early termination of probation.

Flanzer v. Board of Dental Examiners (1990) 220 Cal.App.3d 1392 is instructive. There, the Board of Dental Examiners revoked a dentist’s license for gross ignorance, and the dentist later petitioned for reinstatement pursuant to Government Code section 11522, which provides a person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of the penalty. (*Flanzer*, at pp. 1395-1396.) The Board of Dental Examiners reinstated the dentist’s license subject to certain conditions, and he filed a petition for writ of mandate challenging the propriety of the conditions. The trial court found the conditions were not an abuse of discretion and the dentist appealed. Before addressing the conditions, the appellate court first noted, “An applicant for reinstatement of a revoked license is in the same position as a person seeking a license in the first place. [Citations.] Accordingly, the trial court and this court are limited to a determination of whether the Board’s findings are supported by substantial evidence.” (*Id.* at p. 1396.)

This case is similar. The plaintiff in *Flanzer* sought relief pursuant to Government Code section 11522, which provides, “A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition.” Bombardini’s petition was filed pursuant to an analogous statute applicable to the Board of Psychology—Business and Professions Code section 2962—that provides, “A person whose license ... has been revoked, suspended, or surrendered, or who has been placed on probation, may petition the board for reinstatement or modification of the penalty, including modification or

termination of probation” after a period of not less than one, two, or three years has elapsed from the effective date of the decision. (Bus. & Prof. Code, § 2962, subd. (a); see *id.*, subd. (b).) If an agency’s decision on a petition for reinstatement pursuant to Government Code section 11522 is reviewed under the substantial evidence test, we see no reason why the Board’s decision on a petition for termination of probation under Business and Professions Code section 2962 would not also be reviewed under the substantial evidence test. We recognize that Bombardini was seeking early termination of her probation and was not seeking reinstatement of a previously revoked license, but we find that distinction is not dispositive. In both *Flanzer* and this case, the licensee was disciplined, and in both cases, the licensee sought to end the discipline and reinstate the license.

We find further support for our conclusion in cases discussing the distinction between a vested right and a nonvested right. “The term ‘vested’ denotes a right that is either ‘already possessed’ [citation] or ‘legitimately acquired’ [citation]. Business or professional licensing cases have distinguished between the denial of an application for a license (nonvested right) and the suspension or revocation of an existing license (vested right).” (*Berlinghieri v. Department of Motor Vehicles, supra*, 33 Cal.3d at p. 396.) “In cases involving applications for a license, the courts have largely deferred to the administrative expertise of the agency. [Citation.] Courts are relatively ill-equipped to determine whether an individual would be qualified, for example, to practice a particular profession or trade. [Citation.] In a case involving the agency’s initial determination whether an individual qualifies to enter a profession or trade the courts uphold the agency decision unless it lacks substantial evidentiary support.” (*Bixby v. Pierno, supra*, 4 Cal.3d at p. 146.) However, “Once an agency has exercised its expertise and issued a license, the agency’s subsequent revocation of that license generally calls for an independent review of the facts, because the revocation or suspension affects a vested right.” (*Berlinghieri*, at p. 396.)

Here, the right Bombardini already possessed when she filed her petition for early termination was the right to practice her profession subject to the terms and conditions of her probation, and she sought to end those terms and conditions early. This is more akin to applying for an unrestricted license than to disciplining an existing license. Moreover, just as courts are relatively ill-equipped to determine whether an individual would be qualified to practice a particular profession, they are also relatively ill-equipped to determine whether an individual can safely resume the unrestricted practice of a profession after having been placed on probation for a period of time and before the probationary term has ended.

Bombardini argues that applying the substantial evidence test in a case like this “would allow a licensing board to avoid independent review simply by styling a disciplinary order as a stayed revocation with probationary restrictions, even where those restrictions prevent all practice.” Not so. Had Bombardini timely challenged the Board’s 2021 disciplinary order, the trial court would have applied the independent judgment test when reviewing that order. (See, e.g., *Watson v. Superior Court*, *supra*, 176 Cal.App.4th at p. 1412 [applying independent judgment test to decision placing physician on probation for five years].) But the trial court determined she did not timely challenge the 2021 disciplinary order. That leaves the 2024 order denying her petition for early termination of probation, and for the reasons explained above, that order was properly reviewed under the substantial evidence test. Bombardini also argues the hearing on her petition for early termination “was the only mechanism available to seek relief from restrictions that had made her license nonfunctional.” Again, not so. She could have challenged the restrictions by timely appealing the 2021 disciplinary order, but she failed to do so.

We thus find the trial court properly applied the substantial evidence test. This finding, in turn, affects the standard of review on appeal. “An appellate court in a case not involving a fundamental vested right reviews the agency’s decision, rather than the

trial court’s decision, applying the same standard of review applicable in the trial court.” (*Schafer v. City of Los Angeles* (2015) 237 Cal.App.4th 1250, 1261; see also *Desmond v. County of Contra Costa* (1993) 21 Cal.App.4th 330, 334 [“The scope of our review of the subject administrative agency action in this case is identical with that of the superior court”].) Thus, we “do[] not act as a trier of fact,” and instead determine only “whether substantial evidence in the record supports the agency’s factual findings. [We] also determine[] whether the findings support the agency’s decision and whether the agency committed any legal error.” (*Schafer*, at pp. 1260-1261.) Moreover, “When the standard of review is the substantial evidence test, as it is here, it is presumed that the findings and actions of the administrative agency were supported by substantial evidence. [Citations.] Thus, since the same standard of review applies now on appeal as did in the trial court, the burden is on appellant to show there is no substantial evidence whatsoever to support the findings of the Board.” (*Desmond*, at pp. 335-336.) “Questions of law, however, are reviewed de novo.” (*Schafer*, at p. 1261.)

II. The 1984 Conviction

Like she did both before the Board and in the trial court, Bombardini continues to argue that the Board lacked authority or jurisdiction to discipline her based on her 1984 conviction because the limitations period had expired long before the Board filed the 2019 accusation. To support it, she cites Business and Professions Code section 2960.05, subdivision (a), which provides, “any accusation filed against a licensee ... shall be filed within three years from the date the board discovers the alleged act or omission that is the basis for disciplinary action, or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first.” Her theory is that the Board discovered her 1984 conviction no later than 2008 and any accusation based on the conviction thus had to be filed no later than 2011, and the 2019 accusation was thus untimely. The Board responds that subdivision (b) contains an

exception to this rule that provides, “An accusation filed against a licensee ... alleging the procurement of a license by fraud or misrepresentation is not subject to the limitations set forth in subdivision (a).” We need not decide who is right, however, because the Board did not discipline Bombardini based on either the 1984 conviction or her failure to disclose when she applied for a license and this conviction is thus irrelevant. Instead, and as noted above, in its 2021 decision the Board *dismissed* the second cause for discipline, which was based on the allegation Bombardini procured a license by fraud or misrepresentation due to her failure to disclose the 1984 conviction.

Bombardini appears to contend that the Board relied on the 1984 conviction when it denied her petition for early termination, and that this fact makes that conviction relevant to this appeal. It is clear from the decision itself, however, that the Board did not rely on the 1984 conviction when it denied her petition for early termination.

The Board began its 2024 decision by describing the earlier disciplinary proceeding. It noted the accusation alleged two causes existed to discipline Bombardini’s license, and the second cause was for “fraud or deception in applying for her license by failing to disclose a 1984 conviction for insufficient funds for checks.” It also noted it found the allegation that Bombardini engaged in fraud or deception when applying for her license was “unproven” and it thus “dismiss[ed] the corresponding cause for discipline.” It then noted it found cause for discipline existed based on her conviction for insurance fraud and it briefly discussed the basis for that finding. The Board also described Bombardini’s testimony at the hearing. Although much of her testimony related to the 1984 conviction, the Board did not mention any of that testimony, and it focused entirely on her testimony about the insurance fraud conviction. Finally, when the Board explained why it was denying Bombardini’s petition for early termination, it found she was missing the “state of mind element of rehabilitation,” which it defined as a state of mind “that has a mature, measured appreciation of the gravity of the misconduct” and that “take[s] responsibility for the misconduct and show[s] an appreciation for why it is

wrong.” In finding Bombardini lacked this state of mind, it never mentioned the 1984 conviction. Instead, it found Bombardini “denied having committed insurance fraud.” It also found, “She continues to deny her criminal conduct, claims she is being unfairly punished, and asserts she is a victim of her circumstances. She has yet to gain any insight into the misconduct that led to her license being placed on probation.” And again: “Her continued lack of insight into the misconduct that led to her license being placed on probation is of serious concern.” Because the Board clearly stated the sole cause for discipline was her conviction for insurance fraud, it is also clear that when it twice referred to the “misconduct that led to her license being placed on probation,” it was referring to that conviction, and not to the 1984 conviction. It is thus clear to us that the Board found it was Bombardini’s lack of insight into the insurance fraud conviction that was the basis for its decision to deny her petition for early termination, and not her lack of insight into either the 1984 conviction or her failure to disclose it on her application for licensure.

We also note Bombardini did not timely challenge the Board’s 2021 decision, and she cannot do so now under the guise of challenging the 2024 decision. As noted above, if Bombardini wanted to challenge the 2021 decision, she had to file a petition for writ of mandate “within 30 days after the last day on which reconsideration can be ordered.” (Gov. Code, § 11523.) “The power to order a reconsideration shall expire 30 days after the delivery or mailing of a decision to a respondent, or on the date set by the agency itself as the effective date of the decision if that date occurs prior to the expiration of the 30-day period.” (Gov. Code, § 11521, subd. (a).) Here, the Board mailed the decision to Bombardini on March 24, 2021, and its effective date was April 23, 2021, which was exactly 30 days after the mailing date. The power to order reconsideration thus expired on April 23, 2021, and if Bombardini wanted to challenge the 2021 decision, she had to

file a petition for writ of mandate by May 24, 2021.³ She did not do so. Indeed, she acknowledges in her opening brief that she “did not seek writ review of the 2021 disciplinary order” and she “accepted the discipline and undertook to comply with all probationary conditions.” Bombardini’s challenge to that decision is thus barred, as the trial court properly held. (See *Hansen v. Board of Registered Nursing* (2012) 208 Cal.App.4th 664, 670 [nurse who failed to file petition for writ of mandate within the time limits provided in Gov. Code, § 11523 “ ‘was not entitled to any relief as a matter of law’ ”]; *Morton v. Board of Registered Nursing* (1991) 235 Cal.App.3d 1560, 1567 [“[W]here a petition for writ of mandate is filed ... , Government Code section 11523 requires that the challenge be launched within 30 days after the effective date of the board’s order. Morton was late; she was not entitled to any relief as a matter of law”]; *Vo v. Board of Medical Quality Assurance* (1991) 235 Cal.App.3d 820, 825 [“ ‘a proceeding for writ of mandate is barred if not commenced within the applicable limitation period’ ”]; *Heidkamp v. Department of Alcoholic Beverage Control* (1963) 212 Cal.App.2d 516, 518 [mandamus proceeding filed after expiration of 30 day-period “is barred”].)

Bombardini may disagree. She cites the rule that “[j]urisdictional issues are never waived and may be raised at any time” (*Briggs v. Resolution Remedies* (2008) 168 Cal.App.4th 1395, 1400), and she then argues the Board lacked jurisdiction to discipline her for failing to disclose the 1984 conviction on her application because the accusation was filed outside the limitations period provided in Business and Professions Code section 2960.05. We need not decide whether filing an accusation outside the relevant limitations period is jurisdictional, however, because the Board did not discipline

³ Thirty days from April 23, 2021, is May 23, 2021, which was a Sunday, and pursuant to Code of Civil Procedure sections 10 and 12a, the deadline was extended to Monday, May 24, 2021.

Bombardini for failing to disclose the 1984 conviction in her application. Simply put, there is no need for us to determine whether the Board had jurisdiction to make a decision it did not actually make.

In sum, the 1984 conviction has no relevance to this appeal.

III. The Board Did Not Abuse its Discretion in Denying the Petition

Bombardini also argues the Board abused its discretion in denying her petition for early termination for a variety of reasons. We are not persuaded by any of her arguments.

A. Bombardini’s challenge to the conditions of her probation

Bombardini argues the conditions of her probation that require her “to be actively employed as a psychologist, including supervised practice and monitoring” are “impossible to satisfy” because potential employers will not hire her because she is on probation.⁴ As discussed above, however, the time to challenge the conditions of her probation was back in 2021 when the Board imposed them.

We also note that although Bombardini ostensibly filed a petition “for early termination and/or modification of probation” as permitted by Business and Professions Code section 2962, subdivision (a), she did not actually ask the Board to modify or eliminate any of the conditions of her probation. Instead, she asked only that it terminate her probation. In the petition itself she stated, “I am writing to petition for *early termination* of probation.” (Italics added.) And again: “Circumstances and hardship oblige me to petition to *terminate probation*.” (Italics added.) And at the administrative

⁴ The Board responds that none of the conditions is dependent on employment, although “they do require practice [i.e., as a psychologist] as a standard condition of probation,” and it explains, quite reasonably, that if Bombardini “does not practice, she cannot comply with the practice monitor condition, and the Board cannot ascertain if [she] is safe to practice psychology.” The Board also notes Bombardini can practice psychology without being employed, for example, by providing services pro gratis or opening a private practice.

hearing, she never asked the Board to modify or eliminate any conditions of her probation. Had she wanted the Board to modify or eliminate certain conditions of her probation, she could have requested such relief in her petition and at the hearing, and if it had denied the request, she could have sought judicial review of that decision. “Judicial review in an administrative mandamus action brought pursuant to Code of Civil Procedure section 1094.5 is limited to issues raised in the proceedings before the administrative agency,” and the “court cannot properly grant relief based on a legal theory not presented at the administrative proceeding.” (*Dobos v. Voluntary Plan Administrators, Inc.* (2008) 166 Cal.App.4th 678, 688.) Because Bombardini did not ask the Board to modify or eliminate any of the conditions of her probation, we cannot decide their propriety on appeal.

Even if we could decide their propriety, we note that the only case Bombardini cites to support her argument that the employment-based conditions are arbitrary—*Landau v. Superior Court* (1998) 81 Cal.App.4th 191—actually undermines her argument. In *Landau*, a doctor challenged the Medical Board of California’s revocation of her license, arguing the penalty was unreasonable, arbitrary, and excessive. (*Id.* at pp. 196, fn. 1, 216-217.) The trial court upheld the revocation and the appellate court affirmed. It explained, “ ‘ “The propriety of a penalty imposed by an administrative agency is a matter within its discretion and, absent a manifest abuse thereof, it will not be disturbed upon review by a trial or appellate court. [Citations.] Even if the penalty were to appear to be too harsh according to the court’s evaluation, the court is not free to substitute its own discretion for that exercised by the administrative agency. [Citation.] (Fn. omitted.)” [Citations.] Even were the penalty to appear harsh to us, still we would not be free to substitute our discretion for that of the administrative body. The facts that reasonable minds might differ as to the propriety of the penalty imposed fortifies the conclusion that the administrative body acted within its discretion.’ ” (*Id.* at p. 221.) Thus, far from supporting Bombardini’s argument that some of the probation conditions

were arbitrary or an abuse of discretion, *Landau* demonstrates how difficult it is to successfully challenge a penalty determination. At best, we might find reasonable minds could differ on the propriety of the practice-based conditions, but this would only fortify a conclusion there was no abuse of discretion.

B. The Board’s finding that Bombardini failed to prove rehabilitation

Several of Bombardini’s arguments address rehabilitation, and she appears to acknowledge it was her burden to demonstrate both rehabilitation and present fitness to practice. To this we would add that the Psychologist Licensing Law required her to meet her burden by clear and convincing evidence. (Bus. & Prof. Code, § 2962, subd. (d).) Bombardini appears to argue the Board’s finding that she failed to prove rehabilitation is not supported by the evidence. We disagree.

Bombardini notes the Board acknowledged she paid its investigative costs, filed all required reports, committed no further misconduct, and caused no harm to patients, and she contends these things “are the core indicators of rehabilitation.” She cites no legal authority to support that contention,⁵ and it is at odds with both the Board’s Disciplinary Guidelines and case law. As noted, the Disciplinary Guidelines provide, “The state of mind demonstrating rehabilitation is one that has a mature, measured appreciation of the gravity of the misconduct and remorse for the harm caused. Petitioner must take responsibility for the misconduct and show an appreciation of why it is wrong.” (Board of Psychology, Disciplinary Guidelines (amended Apr. 2015) § V <https://www.psychology.ca.gov/laws_regs/dg_order.pdf> [as of Oct. 6, 2026].) Case law similarly holds, “Fully acknowledging the wrongfulness of [one’s] actions is an

⁵ The only legal authority Bombardini cites in this section of her brief is “*Hughes v. Bd. of Architectural Exam’rs*, *supra*, 17 Cal.4th at p. 797,” and page 797 of that decision is from the dissent. Indeed, she cites the dissent in *Hughes* two other times as well. It is axiomatic that “dissenting opinions are not binding precedent.” (*People v. Lopez* (2012) 55 Cal.4th 569, 585.)

essential step towards rehabilitation,” and “ ‘a lack of remorse’ ” can suggest a “ ‘lack of rehabilitation.’ ” (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940; see also *Hoang v. California State Bd. of Pharmacy* (2014) 230 Cal.App.4th 448, 457 [“Defendant [Board of Pharmacy] found plaintiff’s ‘failure to acknowledge the violations and submit evidence that he accepts responsibility [to be] troubling,’ and expressed ‘concern[] about the lack of any evidence of remorse or the submission of any evidence that [plaintiff] had undergone any sort of rehabilitation with respect to his conduct.’ Contrary to plaintiff’s argument, the consideration of his lack of remorse or proof of rehabilitation was appropriate”]; *Hanna v. Dental Bd. of California* (2012) 212 Cal.App.4th 759, 767 [no abuse of discretion where dental board revoked dentist’s license based, in part, on her “unwillingness to admit any wrongful acts”].)

Acknowledging the wrongfulness of the conduct that led to discipline and taking responsibility for it are thus the core indicators of rehabilitation, and not, as Bombardini states, filing reports, paying costs, and committing no further misconduct while on probation. Indeed, case law teaches that committing no further misconduct while on probation is not particularly strong evidence of rehabilitation because “exemplary conduct is demanded of a probationer, whose activities are supervised and overseen by” the relevant licensing agency. (*Seide v. Committee of Bar Examiners, supra*, 49 Cal.3d at p. 941; see *id.* at pp. 939, 941-942; see also *In re Menna* (1995) 11 Cal.4th 975, 989 [petitioner’s “five and one-half years of unsupervised good conduct is not a sufficient period of time to demonstrate genuine reform”]; *In re Giddens* (1981) 30 Cal.3d 110, 116 [requiring further proof of rehabilitation “during a period when petitioner is ... no[t] under supervision of the bar”].)

Bombardini also complains the Board “faulted [her] for lacking ‘insight’ because she continued to maintain that her workers’ compensation claim was based on a genuine medical condition,” and she argues she should not be required “to adopt the Board’s narrative of past events as a condition of relief” or “confess to the Board’s

characterization of disputed facts to demonstrate rehabilitation.” She also argues, “Nothing in the workers’ compensation proceedings found that [she] fabricated her injury, submitted a nonexistent condition, or invented a medical claim. While the criminal matter resulted in a misdemeanor disposition, the evidentiary record before the Board contains no finding by the workers’ compensation tribunal that the injury itself was false or medically baseless.” Although that is the extent of her argument on this issue and she cites no legal authority to support it, it appears to us that she is suggesting her misdemeanor conviction for insurance fraud was unwarranted, and the Board should not have disciplined her without undertaking its own investigation into the bona fides of the conviction. If so, we reject the argument.

Bombardini also argues the Board “overweighted” her perceived lack of insight and ignored other “objective” evidence of rehabilitation. She notes she expressed remorse at the hearing—which is true to a point—but she ignores the fact that she also continued (and continues in this appeal) to downplay the insurance fraud conviction and/or to suggest it was somehow unwarranted. In her petition for early termination, she wrote that the “worker’s compensation investigation result[ed] from a claim that I made requesting physical therapy for carpal tunnel syndrome, which was triggered by excessive typing during my employment with Kaiser Permanente [¶] It was my understanding from colleagues that WC had a special physical therapy treatment which would avoid having surgery for carpal tunnel. I was naïve and misinformed and unfortunately filed for compensation which led to charges of fraud. I do regret having applied for these services which has caused me much grief, desolation, guilt, and financial disparity, as I have been unable to gain employment since my license was disciplined. . . . [¶] However, please know that I never intended to commit a fraudulent act, as there was and is enough evidence from medical records that I had this condition.” The Board was justified in finding this expression of remorse in her petition was qualified, because it suggests that what Bombardini regretted was the financial fallout from the conviction,

and not the conduct underlying the conviction. Moreover, insisting she actually had the condition for which she sought workers' compensation, and she never intended to commit a fraudulent act suggests she does not take full responsibility for her crime.

The qualified nature of her expressions of remorse was repeated at the hearing, when Bombardini testified, "I am not a criminal, but I really feel like I'm being treated as one," and, "I was persecuted and banished following an unfair hearing." She also testified, "I didn't think that this [i.e., the insurance fraud conviction] was going to come to this, to having my license on probation." Finally, she testified, "I didn't really have good attorneys unfortunately," and she only pled no contest to the insurance fraud charge because her attorneys "told me to, which unfortunately I did, and I didn't really understood [*sic*] exactly what that meant." Again, this testimony suggests that Bombardini believes she did not actually commit insurance fraud and she only pled no contest to that charge based on bad advice from bad attorneys, and she was thereafter unfairly persecuted by the Board. This testimony supports the Board's finding that Bombardini "has yet to achieve th[e] necessary state of mind" to demonstrate rehabilitation because, "[s]he continues to deny her criminal conduct, claims she is being unfairly punished, and asserts she is a victim of her circumstances. She has yet to gain any insight into the misconduct that led to her license being placed on probation."

Bombardini also argues the Board ignored "uncontested evidence" of rehabilitation. She points to letters from "colleagues and a treating psychologist attesting to [her] integrity and low risk." These letters are entitled to little—if any—weight. The letters are all generic letters of recommendation. *All* of them predate Bombardini's November 2018 conviction for insurance fraud, *most* of them predate the 2014 conduct underlying the conviction, and *none* of them mention either the conviction or the underlying conduct. Indeed, several of the letters predate her licensure by the Board and appear to be recommendations for graduate school or postdoctoral programs. Because none of the letter writers stated they were aware of Bombardini's conviction, the letters

are “entitled to little weight as they did not reflect that their authors knew the full extent of petitioner’s misconduct and still held to their original opinions of [her].” (*In re Ford* (1988) 44 Cal.3d 810, 818; see also *Seide v. Committee of Bar Examiners*, *supra*, 49 Cal.3d at p. 940 [“If the character witnesses were not aware of the extent and seriousness of petitioner’s criminal activities, their evaluations of his character carry less weight”].)

As for Bombardini’s therapist, he filled out a form stating he had read the Board’s decision placing her on probation, and he wrote the following: “Having read a copy of the decision, it appears that Dr. Bombardini has fulfilled the requirements in that decision. It is also well known how intense pain can affect one’s emotions, and in itself can be very traumatizing. That Dr. Bombardini applies for WC, while in the state of being, is far from ‘criminal behavior’ or ‘fraudulent’. To imagine that Dr. Bombardini would be defrauding any insurance that covers patients’ therapy for example, based on her own past behavior is not a reasonable assumption and/or conclusion. Dr. Bombardini is also taking every measure possibly to resolve pain, and the stressors that have complicated her previous life.” Like Bombardini herself, her therapist appears to suggest she did not engage in criminal behavior, which is belied by the conviction itself. The Board was not required to accept the therapist’s unsupported opinion as proof that Bombardini was rehabilitated.

Finally, Bombardini argues the evidence shows she has been unable to work since being placed on probation and has thus lost over \$700,000 in income.⁶ This is not evidence of either rehabilitation or her current fitness to practice, and Bombardini fails to offer any argument or cite any authority that explains why this fact demonstrates the

⁶ Bombardini points to letters from two potential employers stating they are unwilling to hire her because she is on probation. The fact that two employers are unwilling to hire her, however, is not evidence of rehabilitation.

Board abused its discretion in denying her petition for early termination. As previously noted, the Board’s highest priority is “[p]rotection of the public,” not the employability or financial well-being of psychologists. (Bus. & Prof. Code, § 2920.1.)

In sum, we find the Board did not abuse its discretion in denying the petition for early termination of probation.

IV. Alleged Procedural Unfairness in the 2020 Proceeding

Bombardini’s final argument is that the Board’s 2024 decision denying her petition for early termination “relied on a record shaped by ... procedural deficiencies” in the earlier disciplinary proceeding. Bombardini could have challenged the Board’s 2021 disciplinary decision on the ground the hearing was not fair. (Code Civ. Proc., § 1094.5, subd. (b) [in petition for writ of mandate, “inquiry ... shall extend to the question[] of ... whether there was a fair trial”]; *Pomona College v. Superior Court* (1996) 45 Cal.App.4th 1716, 1730 [“the ‘fair trial’ requirement is equivalent to a prescription that there be a fair administrative hearing”].) Again, however, she did not timely challenge the Board’s 2021 decision, and she cannot use her challenge to the 2024 decision to argue she did not get a fair hearing during the earlier proceeding.

Even if we could consider her “no fair hearing” arguments, we would reject them on the merits. For example, she notes she was unrepresented at the hearing, but this is not grounds for finding the hearing was unfair. As required by the Administrative Procedure Act (see Gov. Code, § 11509), she was notified, “You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel.” No more was required. (See, e.g., *Borror v. Department of Investment* (1971) 15 Cal.App.3d 531, 544.)

She also complains she lacked meaningful access to the Board’s investigative file before the hearing and thus the evidence that would be used against her. The only

evidence she cites to support this assertion is “CT 9,” which refers to her petition for writ of mandate. In it, she alleges she “was not aware” that Business and Professions Code section 8000, subdivision (c), gave her the right to request a copy of the “complete file” the Board maintained about her, she thus did not request a copy of the file and, “[a]ccordingly, [she] did not have access to critical evidence.” She cites no legal authority for the proposition that her own failure to request a copy of the file demonstrates the hearing was unfair,⁷ particularly where, as here, the Board notified her several months before the hearing that she was “entitled to compel ... the production of books, documents, or other things,” and five days before the first day of the hearing it mailed her a copy of the exhibits it intended to introduce.

Finally, she complains the hearing was held remotely “and the telephonic format was affected by connectivity problems that disrupted her presentation.” Again, the only evidence she cites to support this statement is the petition for writ of mandate, and her allegation that she “had tumultuous phone connectivity issue[s] throughout the hearing” and “lost her audio several times.” She cites no authority for the proposition that holding a hearing remotely during the height of the COVID-19 pandemic⁸ rendered the proceedings unfair. Moreover, even if she had cited such authority, because we have not been provided with a transcript of the hearing, there is no way for us to evaluate her assertion that connectivity issues rendered the hearing fundamentally unfair.

⁷ Bombardini cites *Gikas v. Zolin* (1993) 6 Cal.4th 841, 850-851, for the proposition that “[a] hearing is not meaningful when the licensee is denied access to the evidence being used against her.” We see nothing in *Gikas* about access to evidence, and the cited pages discuss collateral estoppel, privity, and whether the findings in an administrative hearing to suspend a person’s driver’s license for driving while intoxicated have a preclusive effect on related criminal proceedings, none of which are at issue here.

⁸ The hearing was held in May and June of 2020.

DISPOSITION

The judgment is affirmed, and the Board shall recover its costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1), (2).)

/s/

EARL, P. J.

We concur:

/s/

BOULWARE EURIE, J.

/s/

FEINBERG, J.