ANTHONY COLANDREA *v.* CONNECTICUT STATE DENTAL COMMISSION ET AL.
(AC 45365)

Moll, Seeley and Pellegrino, Js.

Syllabus

The plaintiff dentist appealed to this court from the judgment of the trial court dismissing his administrative appeal from the final decision of the defendant Connecticut State Dental Commission, which found him guilty of incompetence or negligence toward patients in violation of statute (§ 20-114 (a) (2)) and revoked his license to practice dentistry. The defendant Department of Public Health had filed a statement of charges with the commission, alleging that the plaintiff violated § 20-114 (a) (2) by failing to properly maintain certain patient records, which subjected him to disciplinary action pursuant to statute (§ 19a-17). The Commissioner of Public Health previously had issued a subpoena duces tecum to the plaintiff seeking production of the records in connection with the department's investigation of his billing practices. When the plaintiff failed to comply with the subpoena, the trial court granted a petition by the commissioner to enforce the subpoena and subsequently found the plaintiff in contempt. During a hearing on a motion the plaintiff filed to vacate the contempt finding, he testified that the records had accidentally been destroyed after becoming wet and contaminated with mold as a result of a flood in his basement and that no copies existed. The

plaintiff filed a request for a more specific statement of the department's charges against him and asserted as a special defense the doctrine of res judicata, alleging that he was being subjected to disciplinary action for the same acts and omissions that were at issue in the subpoena enforcement action. A three member panel of the commission conducted hearings, during which it denied the plaintiff's request for a more specific statement of the charges and rejected his special defense of res judicata. After the hearing was closed, D, a member of the panel, made a phone call to T, the department's attorney, congratulating him on his argument to the panel. The plaintiff then moved to dismiss the statement of charges because of the ex parte communication, and D then recused herself and was replaced by another commission member. The new panel submitted a proposed decision to the commission, which thereafter granted a motion the plaintiff had filed seeking a hearing regarding the ex parte communication. At the hearing, the commission heard testimony regarding the ex parte communication and argument regarding the proposed decision, after which it adopted the proposed decision as its final decision. The plaintiff then appealed to the trial court and moved to stay the enforcement of the commission's final decision during the pendency of the appeal. After the court granted the motion to stay in part, the plaintiff filed a motion to allow proof outside of the record, in which he sought to present evidence of bias resulting from the ex parte communication as well as from the conduct by and actions of the commission and its first three member panel. The court denied the plaintiff's motion to supplement the record and thereafter dismissed his appeal. *Held*:

1. The plaintiff could not prevail on his claim that the trial court improperly determined that the doctrine of res judicata did not bar the department's disciplinary action against him: the subpoena enforcement proceeding and the department's disciplinary action served distinct purposes, involved different claims and legal issues under different statutory provisions and sought different remedies, as the subpoena enforcement action was brought to aid the department's investigation of the plaintiff's billing practices, whereas the disciplinary matter concerned his failure to maintain patient records properly; moreover, the licensure disciplinary claims were governed by §§ 20-114 (a) (2) and 19a-17, whereas the subpoena enforcement action sought to compel the production of patient records pursuant to statute (§ 19a-14 (a) (10)) and involved the use of the court's contempt power to sanction the plaintiff for having failed to adhere to court orders; furthermore, contrary to the plaintiff's contention that the department had attempted to relitigate the issue of sanctions in the disciplinary matter based on the same conduct that was at issue in the subpoena enforcement proceeding, the department had no opportunity in the subpoena enforcement proceeding to litigate the claims it raised in the disciplinary matter, and the remedies sought and imposed in the disciplinary matter were not available as relief in the subpoena enforcement proceeding.

2. The congratulatory phone call by D did not, as the plaintiff claimed, give rise to a rebuttable presumption of prejudice pursuant to statute (§ 4-181 (a)); the conversation was not a prohibited communication under the statute, as it did not concern an issue of fact or law, which was required for a violation of § 4-181 (a).

3. The plaintiff's claim that the commission abused its discretion in revoking his dentistry license as a disciplinary sanction was unavailing: after determining that the plaintiff had failed to maintain patient records properly, notwithstanding that he had knowledge of the department's investigation, the commission reasonably found that good cause existed to revoke his license, the commission having determined that the plaintiff was not a credible witness with respect to the destruction of the patient records and that his explanations and conduct were contrived and intentional.

4. The trial court properly rejected both the plaintiff's claim that the commission and its original three member panel had violated his right to due process by failing to act as impartial arbiters and his motion to allow proof outside of the record concerning alleged irregularities in the commission's procedures:

a. Other than rulings that were contrary to his requests, the plaintiff provided no evidence of bias to support his assertion that the original panel and the commission were biased against him in failing to exercise their judgment when rejecting both his res judicata defense and his request for a more specific statement of the charges against him; the record belied the plaintiff's claims that the original panel and the commission had failed to review the written filings or to understand applicable legal principles, as the hearing officer had referred the original panel to the parties' filings, after which that panel heard oral argument from the parties, asked questions and commented on the merits of the plaintiff's requests; moreover, there was no basis to conclude that the commission was not impartial in considering the plaintiff's claims concerning the ex parte communication between D and T, the commission having heard testimony from D, T and other panel members, whom the plaintiff's counsel cross-examined, and oral argument from the parties before issuing its ruling.

b. The trial court did not abuse its discretion in denying the plaintiff's motion to supplement the record: although the plaintiff sought to engage in limited discovery concerning the ex parte communication between D and T as well as whether the commission had predetermined the issue of sanctions prior to hearing evidence, this court was not convinced that the rulings of and conduct by the original three member panel and the commission demonstrated bias, as the trial court had reasonably determined that the record was adequate for the plaintiff to raise his claims of a lack of impartiality, and no presumption of prejudice under § 4-181 (a) arose from the ex parte communication.

Argued May 9—officially released September 19, 2023

Procedural History

Appeal from the decision of the named defendant concluding that the plaintiff had failed to properly maintain certain patients' records and revoking his license to practice dentistry, brought to the Superior Court in the judicial district of New Britain, where the court, *Hon. Henry S. Cohn*, judge trial referee, granted in part the plaintiff's motion for a stay and denied the plaintiff's motion to offer certain evidence; thereafter, the case was tried to the court, *Cordani*, *J.*; judgment dismissing the appeal, from which the plaintiff appealed to this court. *Affirmed.*

A. Paul Spinella, for the appellant (plaintiff).

Shawn L. Rutchick, assistant attorney general, with whom, on the brief, was *William Tong*, attorney general, for the appellees (defendants).

Opinion

MOLL, J. The plaintiff, Anthony Colandrea, a dentist, appeals from the judgment of the Superior Court dismissing his administrative appeal from the decision of the defendant Connecticut State Dental Commission[1] (commission) disciplining him after finding him guilty of incompetence or negligence toward patients in violation of General Statutes § 20-114 (a) (2).[2] On appeal, the plaintiff claims that the court improperly dismissed his administrative appeal because (1) the administrative disciplinary proceeding before the commission was

[1] The Department of Public Health also was named as a defendant in the administrative appeal. On January 30, 2023, the department filed a notice indicating that it was adopting the appellate brief filed by the commission in this appeal.

[2] General Statutes § 20-114 (a) provides in relevant part: "The Dental Commission may take any of the actions set forth in section 19a-17 for any of the following causes . . . (2) proof that a practitioner has become unfit or incompetent or has been guilty of cruelty, incompetence, negligence or indecent conduct toward patients . . . ."

barred by the doctrine of res judicata, (2) the defendant Department of Public Health (department) failed to rebut the presumption of prejudice that purportedly arose from an ex parte communication between the department's attorney and a former member of the panel that submitted a proposed decision to the commission pursuant to General Statutes § 4-179,[3] (3) the commission abused its discretion in revoking his dental license as a disciplinary sanction, (4) the panel and the commission failed to act as impartial arbiters, and (5) the court abused its discretion in denying his motion to allow proof outside of the record.[4] We affirm the judgment of the Superior Court.

The following procedural history and facts, as recited by the court[5] or as undisputed in the record, are relevant to our resolution of this appeal. "The plaintiff was at all times relevant to this matter the holder of [a] Connecticut dentist license . . . issued by the department. In 2013, Verisk Health Management ('Verisk'), an auditing firm for United Healthcare Dental, a health insurance provider, attempted to obtain patient dental records from the plaintiff in connection with its audit of

[3] General Statutes § 4-179 provides in relevant part: "(a) When, in an agency proceeding, a majority of the members of the agency who are to render the final decision have not heard the matter or read the record, the decision, if adverse to a party, shall not be rendered until a proposed final decision is served upon the parties, and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the members of the agency who are to render the final decision.

"(b) A proposed final decision made under this section shall be in writing and contain a statement of the reasons for the decision and a finding of facts and conclusion of law on each issue of fact or law necessary to the decision, including the specific provisions of the general statutes or of regulations adopted by the agency upon which the agency bases its findings. . . ."

[4] For ease of discussion, we address the plaintiff's claims in a different order than they are presented in his appellate brief.

[5] In setting forth the facts in its decision dismissing the administrative appeal, the court "note[d] that the plaintiff has not challenged the factual findings made by the commission or the sufficiency of the evidence."

the plaintiff's billing practices. Verisk had found suspect billing patterns. After numerous requests from Verisk were ignored, Verisk contacted the state of Connecticut Office of the Attorney General ('OAG') regarding the possibility that the plaintiff was engaging in fraudulent billing practices. The OAG referred Verisk to the department. On August 27, 2014, the department initiated an investigation of the plaintiff's alleged fraudulent billing activities. On December 10, 2014, the department delivered a letter to the plaintiff requesting the complete copies of all the patient records that Verisk had requested previously. The plaintiff did not comply with the department's request. On November 16, 2015, the department issued a subpoena duces tecum. The subpoena was served on the plaintiff on November 24, 2015, and required the plaintiff to produce thirty-one specified patient records. The plaintiff did not comply with the subpoena.

"The department [through the Commissioner of Public Health] sought enforcement of the subpoena in the Superior Court. [See *Commissioner of Public Health* v. *Colandrea*, Superior Court, judicial district of Hartford, Docket No. CV-15-6064393-S (2015 subpoena enforcement action).] On January 25, 2016, the Superior Court held a hearing regarding the department's petition for enforcement. After hearing arguments from both parties, the court granted the department's petition for enforcement, ordering the plaintiff to produce the subpoenaed patient records to the department. On February 17, 2016, the plaintiff appealed the Superior Court's decision, and on August 1, 2017, [this court] affirmed the Superior Court's decision. [See *Commissioner of Public Health* v. *Colandrea*, 175 Conn. App. 254, 167 A.3d 471, cert. denied, 327 Conn. 957, 172 A.3d 204 (2017).] Upon release of [*Commissioner of Public Health* v. *Colandrea*, supra, 254], the OAG requested that the plaintiff provide the thirty-one subpoenaed

patient records to the department by August 4, 2017, which the plaintiff failed to do. . . . On August 25, 2017, the plaintiff filed a petition for certification to [our] Supreme Court, which was denied on November 8, 2017. On November 13, 2017, the OAG emailed the plaintiff's legal counsel and requested that the subpoenaed patient records be provided to the department by the close of business on November 16, 2017. On November 20, 2017, the OAG filed [a] motion for contempt [on the basis of the plaintiff's failure] to comply with the [subpoena] and the court's orders.

"On December 10, 2017, the motion for contempt was granted. The Superior Court found that the plaintiff wilfully and deliberately refused to comply with the court's order, without legal excuse. The court based this finding upon 'prima facie evidence of noncompliance produced at the hearing.' . . . The court also drew an adverse inference from the plaintiff's assertion of his fifth amendment privilege against self-incrimination when called to testify about the existence and whereabouts of the subpoenaed records. The Superior Court also ordered the plaintiff to pay a 'coercive' fine of $1000 per day to the OAG from the date of the order until the subpoenaed documents were delivered to the department. . . .

"On December 15, 2017, the plaintiff's counsel filed a motion to vacate the order of contempt. In the . . . motion to vacate, the plaintiff for the first time asserted that he had failed to produce the thirty-one subpoenaed patient records because they no longer existed. On January 11, 2018, the plaintiff testified, in a hearing in the Superior Court on the motion to vacate, that the thirty-one subpoenaed records were accidentally destroyed after getting wet and contaminated with mold as a result of a flood in the plaintiff's office basement. The plaintiff also testified that there were no electronic copies or duplicate paper copies of the records that were

destroyed. On January 2, 2019, the Superior Court issued a memorandum of decision on the motion to vacate. The Superior Court upheld its prior determination of contempt but vacated its order regarding the imposition of a civil penalty ($1000) for each day of noncompliance. The Superior Court issued supplemental orders requiring the plaintiff to make available to the department within thirty days from the date of the order any records, electronic or paper, that were in his possession and control that related to the thirty-one patient records identified in the November 26, 2015 subpoena. The Superior Court also ordered that the plaintiff, within sixty days from the date of the order, give the department access to his dental offices [in] Rocky Hill . . . (including the basement) for the purposes of inspecting and verifying the manner of storage, existence and location of stored patient records and other documents. The court found that the remedy imposed was most appropriate to cut through the 'factual fog that [the plaintiff] has thrown over the question of his patient records and [to] get to the bottom of what records actually exist . . . .' The Superior Court also found that the plaintiff's explanation of events showed 'a lack of candor toward the court and counsel, continuing a pattern of obfuscation, delay and deception found throughout this case.' . . . The Superior Court likened the case to the 'ongoing game of "hare and hounds" ' between the plaintiff and the department. . . . The Superior Court's decision was affirmed by [this court] on February 23, 2021, [and our Supreme Court denied the plaintiff's subsequent petition for certification on April 6, 2021]. See *Commissioner of Public Health* v. *Colandrea*, 202 Conn. App. 815, 247 A.3d 193, cert. denied, 336 Conn. 930, 248 A.3d 1 (2021).

"Additionally, on January 17, 2018, the department issued a second subpoena to the plaintiff requesting the production of an additional twenty patient records

that Verisk requested. [On February 7, 2018, the department, through the Commissioner of Public Health, filed a petition to enforce the second subpoena. See *Commissioner of Public Health* v. *Colandrea*, Superior Court, judicial district of Hartford, Docket No. CV-18-6088830-S.] On February 14, 2018, the plaintiff filed a motion to quash the [second] subpoena. On March 5, 2018, the [Superior] Court ordered the plaintiff to produce to the . . . court the additional twenty subpoenaed patient records by March 26, 2018. On April 13, 2018, the plaintiff filed a notice with the Superior Court that the subpoenaed records no longer existed." (Citations omitted.)

In May, 2019, the department presented the commission with a statement of charges[6] alleging in relevant part that, "[s]ubsequent to a date in 2014, and with knowledge of the department's request for patient records as part of an ongoing investigation, [the plaintiff] failed to appropriately maintain treatment records for multiple patients," which violated § 20-114 (a) (2) and subjected the plaintiff to disciplinary action pursuant to § 20-114 (a) and General Statutes § 19a-17.[7] On October 29, 2019, the plaintiff filed with the commission a request "that notice be provided as to the date of each [patient] file [at issue in the statement of charges], the patient being treated, and the matter of the treatment provided." The department filed an objection to that request, arguing that "[the plaintiff] and counsel

[6] "The department investigates complaints concerning the competency of licensed health care professionals . . . . If the department's investigation determines that probable cause exists, it issues a statement of charges regarding the alleged improper conduct to the appropriate board." *Idlibi* v. *State Dental Commission*, 212 Conn. App. 501, 507 n.4, 275 A.3d 1214, cert. denied, 345 Conn. 904, 282 A.3d 980 (2022).

[7] Section 19a-17 was amended by No. 19-118, § 7, of the 2019 Public Acts and by No. 22-88, § 2, of the 2022 Public Acts, which made changes to the statute that are not relevant to this appeal. Accordingly, we refer to the current revision of the statute.

have received the department's investigation report and have attended a compliance conference.[8] The matters in issue are well known to them. Indeed, [the plaintiff] has been litigating these matters in Superior Court and on appeal for some three years." (Footnote added.)

On November 5, 2019, the plaintiff filed an answer generally denying the department's allegation while further asserting that he lacked sufficient information to admit or to deny the allegation because the statement of charges "fail[ed] to identify which patient treatment record[s] the [plaintiff] failed to appropriately maintain." In addition, the plaintiff asserted the doctrine of res judicata as a special defense, citing the 2015 subpoena enforcement action in alleging that he was "currently subject to a disciplinary action for the same acts and omissions" at issue in the administrative disciplinary proceeding. Thereafter, the department filed a reply rejecting the applicability of the plaintiff's res judicata defense.

A three member panel of the commission (original panel), consisting of the commission's chairman, Peter S. Katz, and two commission members, Steven Reiss and Deborah M. Dodenhoff, conducted administrative hearings on January 21 and 23, 2020.[9] At the outset of

[8] See General Statutes § 4-182 (c) ("[n]o revocation, suspension, annulment or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action and the specific provisions of the general statutes or of regulations adopted by the agency that authorize such intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license").

In its decision dismissing the administrative appeal, the court stated that, "[a]t the compliance hearing, the matter was discussed, and the plaintiff was allowed an opportunity to explain his compliance position and to advocate against the charges before the charges were brought."

[9] At the outset of the January 23, 2020 hearing, Olinda Morales, the hearing officer who provided legal counsel to the original panel during the administrative hearings, noted that Reiss was not present, such that fact-finding would be postponed until he had been given an opportunity to review the evidence and the transcripts.

the January 21, 2020 hearing, the original panel (1) denied the plaintiff's request for a more specific statement of charges, as well as a motion to dismiss the statement of charges filed by the plaintiff predicated on the department's failure to file a more specific statement of charges, and (2) rejected the plaintiff's res judicata defense. During the hearings, the original panel admitted several exhibits into the record and heard testimony from the plaintiff.[10] The administrative record was closed at the conclusion of the January 23, 2020 hearing.

On January 27, 2020, the plaintiff filed a motion to dismiss the statement of charges on the ground that, following the January 23, 2020 hearing, an ex parte communication occurred between Dodenhoff and David Tilles, the department's attorney. On March 11, 2020, Olinda Morales, the hearing officer who provided legal advice to the original panel during the administrative hearings, sent a letter to the commission (1) notifying it that Dodenhoff had recused herself from the matter on March 9, 2020, and (2) advising it to refrain from discussing the matter with Dodenhoff. Dodenhoff was replaced by another member, Anatoliy Ravin, forming a new panel consisting of Katz, Reiss, and Ravin (new panel).

On March 25, 2021, the new panel submitted a proposed decision to the commission, in which it concluded that the department had (1) demonstrated that the plaintiff was guilty of incompetence or negligence toward patients in violation of § 20-114 (a) (2) by failing to maintain patient treatment records appropriately, notwithstanding his knowledge of the department's

[10] In its decision dismissing the administrative appeal, the court observed that "[t]he plaintiff's direct testimony before the commission consisted largely of the plaintiff reading from a transcript of his testimony before the Superior Court in the hearings regarding enforcement of the department's subpoena."

investigation, and (2) established good cause for the commission to discipline the plaintiff pursuant to § 19a-17 by revoking his dental license and by assessing a $10,000 civil penalty against him.[11] The proposed decision also indicated that the plaintiff's motion to dismiss the statement of charges predicated on the ex parte communication had been denied on March 25, 2021. The parties were notified that the commission would consider the proposed decision at a meeting scheduled for April 28, 2021, and that the parties would have an opportunity to file briefs and exceptions and to request oral argument. On March 30, 2021, the plaintiff filed a request for oral argument, which the commission granted. In addition, on April 14, 2021, the plaintiff filed a motion for a hearing regarding the ex parte communication, asserting that the commission could not adopt the new panel's proposed decision until (1) a factual record had been created regarding the communication and (2) the department had rebutted the presumption of prejudice purportedly stemming from the communication, with the plaintiff having been afforded an opportunity to cross-examine witnesses. The same day, the commission (1) notified the parties that it would hear argument on the plaintiff's motion for a hearing at the April 28, 2021 meeting and (2) advised the parties that, depending on its ruling on the plaintiff's motion for a hearing, they should be prepared at the April 28, 2021 meeting to address the proposed decision and to participate in a hearing on the plaintiff's motion to dismiss the statement of charges predicated on the ex parte communication. Thereafter, the parties filed briefs with the commission.

On April 28, 2021, the commission proceeded with the scheduled meeting. The commission, in effect granting the plaintiff's motion for a hearing, heard testimony

[11] The amount of the civil penalty was predicated on a finding that 200 of the plaintiff's patient treatment records had been discarded, with the plaintiff being fined $50 for each record.

from Dodenhoff, Tilles, and the members of the new panel regarding the ex parte communication. Thereafter, the parties presented oral argument regarding the proposed decision and the ex parte communication. On the same day, following deliberations, the commission issued a final decision, which, other than minor changes, adopted the new panel's proposed decision.

On May 14, 2021, pursuant to General Statutes § 4-183 (a),[12] the plaintiff appealed from the commission's final decision to the Superior Court. On May 20, 2021, the plaintiff filed a motion to stay the enforcement of the final decision during the pendency of the administrative appeal. On May 28, 2021, the commission filed an objection, which the department joined on June 9, 2021. On June 17, 2021, the court, *Hon. Henry S. Cohn*, judge trial referee, granted in part and denied in part the motion to stay, staying the assessment of the $10,000 civil penalty against the plaintiff but declining to stay the revocation of the plaintiff's dental license.

On June 18, 2021, the plaintiff filed a motion to allow proof outside of the record. On July 2, 2021, the commission filed an objection, which the department joined on July 6, 2021. On July 23, 2021, the plaintiff filed a reply brief. On August 11, 2021, the court denied the plaintiff's motion.[13] Subsequently, the parties filed briefs on the merits of the administrative appeal. In his brief, the plaintiff claimed in relevant part that (1) the doctrine of res judicata barred the administrative disciplinary proceeding before the commission, (2) the department failed to rebut the presumption of prejudice that purportedly arose from the ex parte communication, (3)

[12] General Statutes § 4-183 (a) provides in relevant part: "A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision may appeal to the Superior Court as provided in this section. . . ."

[13] On August 16, 2021, the court issued an order correcting certain references to the record made in the August 11, 2021 order.

the original panel and the commission failed to act as impartial arbiters, and (4) the revocation of his dental license constituted an excessive sanction.

On March 9, 2022, following a hearing, the court, *Cordani*, *J.*, issued a decision rejecting the plaintiff's claims and dismissing the administrative appeal. This appeal followed. Additional facts and procedural history will be set forth as necessary.

Unless otherwise noted, the following well established standard of review applies to the plaintiff's claims before us on appeal. "The plaintiff's appeal to the Superior Court was brought pursuant to the Uniform Administrative Procedure Act (UAPA), General Statutes § 4-166 et seq. Judicial review of an administrative decision in an appeal under the UAPA is limited. . . . [R]eview of an administrative agency decision requires a court to determine whether there is substantial evidence in the administrative record to support the agency's findings of basic fact and whether the conclusions drawn from those facts are reasonable. . . . Neither [the appellate] court nor the trial court may retry the case or substitute its own judgment for that of the administrative agency on the weight of the evidence or questions of fact. . . . Our ultimate duty is to determine, in view of all the evidence, whether the agency, in issuing its order, acted unreasonably, arbitrarily, illegally or in abuse of its discretion. . . .

"It is fundamental that a plaintiff has the burden of proving that the [agency], on the facts before [it], acted contrary to law and in abuse of [its] discretion . . . . In addition, although we have noted that [a]n agency's factual and discretionary determinations are to be accorded considerable weight by the courts . . . we have maintained that [c]ases that present pure questions of law . . . invoke a broader standard of review than is ordinarily involved in deciding whether, in light

of the evidence, the agency has acted unreasonably, arbitrarily, illegally or in abuse of its discretion." (Citations omitted; internal quotation marks omitted.) *Idlibi* v. *State Dental Commission*, 212 Conn. App. 501, 517–18, 275 A.3d 1214, cert. denied, 345 Conn. 904, 282 A.3d 980 (2022).

I

We first address the plaintiff's claim that the Superior Court improperly concluded that the administrative disciplinary proceeding before the commission was not barred pursuant to the doctrine of res judicata. We disagree.

"Res judicata, or claim preclusion, express[es] no more than the fundamental principle that once a matter has been fully and fairly litigated, and finally decided, it comes to rest. . . . Generally, for res judicata to apply, four elements must be met: (1) the judgment must have been rendered on the merits by a court of competent jurisdiction; (2) the parties to the prior and subsequent actions must be the same or in privity; (3) there must have been an adequate opportunity to litigate the matter fully; and (4) the same underlying claim must be at issue." (Internal quotation marks omitted.) *Wilmington Trust, National Assn.* v. *N'Guessan*, 214 Conn. App. 229, 236, 279 A.3d 310 (2022). "[T]he applicability of res judicata . . . presents a question of law over which we employ plenary review." (Internal quotation marks omitted.) Id.

The following additional procedural history is relevant to our resolution of the plaintiff's claim. The plaintiff asserted the doctrine of res judicata as a special defense to the statement of charges, citing the 2015 subpoena enforcement action in alleging that he was "currently subject to a disciplinary action for the same

acts and omissions" at issue in the administrative disciplinary proceeding. During the January 21, 2020 administrative hearing, after considering argument from the parties, and in line with advice received from Morales, the original panel rejected the plaintiff's res judicata defense.

In its decision dismissing the administrative appeal, the court determined that the doctrine of res judicata was inapplicable, stating that "the claims in the [2015 subpoena enforcement action] are not the same as the claims in [the administrative disciplinary proceeding]. The [2015 subpoena enforcement action] consisted of the department's effort to investigate the plaintiff's billing practices with a goal of determining whether or not the plaintiff engaged in fraudulent billing practices. As part of this investigation, the department requested certain billing records and was forced to compel the plaintiff to turn the requested records over to the department. The investigation ended with the department being unable to determine whether or not the plaintiff engaged in fraudulent billing practices because the plaintiff destroyed the documents necessary to make that determination. Thus, the purpose and objective of the prior matter was investigation and an allied attempt to obtain records in furtherance of that investigation.

"In contrast, [the purpose of the administrative disciplinary proceeding] was to determine whether the plaintiff should be disciplined as a licensed dentist because of his failure to maintain records that he knew the department, his licensing authority, was legally seeking and had a right to, and which he was legally obligated to maintain. Thus, the claims made in [the administrative disciplinary proceeding] are entirely different from the claims of the [2015 subpoena enforcement action].[14]

[14] "In reality, there were no actual claims in the [2015 subpoena enforcement action], [which] consisted of an investigation into billing practices and an effort to enforce subpoenas. The foregoing cannot accurately be described as 'claims.' "

The licensure disciplinary claims in [the administrative disciplinary proceeding] arise out of §§ 19a-17 and 20-114 (a) (2). In the [2015 subpoena enforcement action], the plaintiff was sanctioned through the contempt power of the court for his failure to properly adhere to court orders. Clearly, the claims and legal issues addressed in the [2015 subpoena enforcement action] and in [the administrative disciplinary proceeding] are entirely different."[15] (Footnote in original; footnote omitted.)

On appeal, the plaintiff contends that the court improperly rejected his res judicata claim in dismissing his administrative appeal because, by way of the administrative disciplinary proceeding, the department was attempting to "[relitigate] the issue of sanctions against [him] based on his failure to maintain patient records," notwithstanding that "[the department] had a full and fair opportunity to litigate this issue during its investigation that began in 2014 and which culminated in sanctions [in the 2015 subpoena enforcement action]." We are not persuaded.

Put simply, the administrative disciplinary proceeding and the 2015 subpoena enforcement action served wholly distinct purposes and involved different claims. In the administrative disciplinary proceeding, the

[15] In addition, in granting in part and denying in part the plaintiff's motion to stay the enforcement of the final decision, the court, *Hon. Henry S. Cohn*, judge trial referee, stated that the two appeals that had been filed with this court in the 2015 subpoena enforcement action at the time, *Commissioner of Public Health* v. *Colandrea*, supra, 175 Conn. App. 254, and *Commissioner of Public Health* v. *Colandrea*, supra, 202 Conn. App. 815, "did not involve the [commission's] conclusions and sanction order on the merits but were concerned with an issuance of a subpoena in connection with the hearing on the merits before the [commission]. Thus, the subpoena issue, before the [commission] and the courts, that resulted in [the two aforementioned appeals to this court], did not amount to a collateral estoppel or res judicata situation. The cases did not involve a decision on the merits of the censure of the plaintiff."

department sought disciplinary action against the plaintiff pursuant to §§ 19a-17 and 20-114 (a) (2) on the basis of the department's allegation that the plaintiff, with knowledge of the department's investigation, failed to maintain patient records properly. The discipline sought and imposed in the administrative disciplinary proceeding—the revocation of the plaintiff's dental license and the imposition of a civil penalty—was not available as relief in the 2015 subpoena enforcement action. See General Statutes § 19a-17 (a) (commission "may take any of the following actions, singly or in combination, based on conduct that occurred prior or subsequent to the issuance of a permit or a license upon finding the existence of good cause: (1) [r]evoke a practitioner's license or permit . . . (7) [a]ssess a civil penalty of up to twenty-five thousand dollars"); see also General Statutes § 20-114 (a) ("[t]he Dental Commission may take any of the actions set forth in section 19a-17 for any of [several enumerated causes]"). In contrast, in the 2015 subpoena enforcement action, the department petitioned the Superior Court to enforce a subpoena seeking the production of patient records to aid in the department's investigation of alleged fraudulent billing practices by the plaintiff. See General Statutes § 19a-14 (a) (10) ("[i]f any person refuses to appear, to testify or to produce any book, record or document when so ordered, a judge of the Superior Court may make such order as may be appropriate to aid in the enforcement of this section").[16] The contempt proceedings and enforcement orders that followed stemmed from the plaintiff's noncompliance with the court's orders.

[16] Section 19a-14 was amended by No. 19-117, §§ 173, 181 and 201 of the 2019 Public Acts; by No. 21-121, § 20, of the 2021 Public Acts; and by No. 22-88, § 1, of the 2022 Public Acts, which made changes to the statute that are not relevant to this appeal. Accordingly, we refer to the current revision of the statute.

In sum, we conclude that there was (1) no identity of claims in the administrative disciplinary proceeding and the 2015 subpoena enforcement action and (2) no opportunity in the 2015 subpoena enforcement action to litigate the claims raised in the administrative disciplinary proceeding.[17] Accordingly, the plaintiff's claim fails.

II

We next address the plaintiff's claim that the Superior Court improperly failed to conclude that the department did not rebut the presumption of prejudice that purportedly arose as a result of the ex parte communication between Dodenhoff and Tilles. The plaintiff maintains that the ex parte communication violated General Statutes § 4-181 (a), thereby creating a rebuttable presumption of prejudice. We are not persuaded.

Our resolution of the plaintiff's claim requires us to construe § 4-181 (a). Although judicial review of an administrative decision in an appeal under the UAPA is restricted, "[a] reviewing court . . . is not required to defer to an improper application of the law. . . . It is the function of the courts to expound and apply governing principles of law. . . . We previously have recognized that the construction and interpretation of a statute is a question of law for the courts, where the administrative decision is not entitled to special deference . . . . Questions of law [invoke] a broader standard of review than is ordinarily involved in deciding whether, in light of the evidence, the agency has acted unreasonably, arbitrarily, illegally or in abuse of

[17] The plaintiff contends that all four elements of the doctrine of res judicata are satisfied in the present case. The elements of the doctrine of res judicata are conjunctive. See *Wilmington Trust, National Assn.* v. *N'Guessan*, supra, 214 Conn. App. 236 ("[g]enerally, for res judicata to apply, *four elements must be met*" (emphasis added; internal quotation marks omitted)). Because we conclude that the third and fourth elements have not been satisfied, we need not discuss the remaining elements.

its discretion. . . . Because this case forces us to examine a question of law, namely, [statutory] construction and interpretation . . . our review is de novo. . . . Additionally, our appellate courts have not had occasion to interpret . . . the statute . . . . Thus, [w]e are also compelled to conduct a de novo review because the issue of statutory construction before this court has not yet been subjected to judicial scrutiny.[18] . . .

"When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and [common-law] principles governing the same general subject matter. . . . The

[18] Although there is appellate case law discussing § 4-181 (a), our research has not revealed any appellate authority addressing the statutory requirement that the ex parte communication concerns an issue of fact or law in the matter, which is the discrete issue before us. Cf. *New England Rehabilitation Hospital of Hartford, Inc.* v. *Commission on Hospitals & Health Care*, 226 Conn. 105, 148, 627 A.2d 1257 (1993) (communication received during investigatory hearing was not prohibited communication under § 4-181 (a) because investigatory hearing was not "contested case" within ambit of § 4-181 (a)).

test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation." (Citations omitted; footnote added; internal quotation marks omitted.) *Robb* v. *Connecticut Board of Veterinary Medicine*, 204 Conn. App. 595, 604–606, 254 A.3d 915, cert. denied, 338 Conn. 911, 259 A.3d 654 (2021).

Section 4-181 (a) provides: "Unless required for the disposition of ex parte matters authorized by law, no hearing officer or member of an agency who, in a contested case, is to render a final decision or to make a proposed final decision shall communicate, directly or indirectly, in connection with any issue of fact, with any person or party, or, in connection with any issue of law, with any party or the party's representative, without notice and opportunity for all parties to participate."[19] As our Supreme Court has explained, "the prohibition of certain communications in administrative proceedings is based on the principle that the decision maker should not receive information to which one or all of the parties are not given an opportunity to respond. The prohibition against ex parte communications is intended to preclude litigious facts reaching the deciding minds without getting into the record." (Internal quotation marks omitted.) *New England Rehabilitation Hospital of Hartford, Inc.* v. *Commission on Hospitals & Health Care*, 226 Conn. 105, 149, 627 A.2d 1257 (1993).

The following additional facts, which are not in dispute, and procedural history are relevant here. Following the conclusion of the January 23, 2020 administrative hearing, a brief phone call occurred between

[19] Pursuant to subsection (b) of § 4-181, "[n]otwithstanding the provisions of subsection (a) of this section, a member of a multimember agency may communicate with other members of the agency regarding a matter pending before the agency, and members of the agency or a hearing officer may receive the aid and advice of members, employees, or agents of the agency if those members, employees, or agents have not received communications prohibited by subsection (a) of this section."

Dodenhoff and Tilles[20] during which Dodenhoff complimented Tilles on the presentation of his argument at the hearing. The phone call was promptly disclosed on the same day.[21] On March 9, 2020, Dodenhoff recused herself from the matter, and, thereafter, she was replaced by Ravin. The plaintiff moved to dismiss the statement of charges on the basis of the ex parte communication, but that motion was denied.

In dismissing the administrative appeal, the court rejected the plaintiff's claim that, pursuant to § 4-181 (a), a rebuttable presumption of prejudice arose from the ex parte communication. The court concluded that, (1) "in order to violate [§ 4-181 (a)], the ex parte communication must be in connection with any issue of fact or law in the pending matter," and (2) "[t]he record evidence . . . does not indicate that the [communication] concerned any issue of fact or law in this matter."[22]

We agree with the court's construction of § 4-181 (a). By its plain terms, § 4-181 (a) does not encompass *all* ex parte communications in contested cases; rather, to violate the provision, the communication must be made

[20] Both Dodenhoff and Tilles testified that (1) Dodenhoff called Tilles and, after Tilles did not answer, left a voice mail, and (2) Tilles returned the missed call. Dodenhoff testified that the return call with Tilles lasted ten seconds.

[21] Tilles testified that he informed the director of his office about the ex parte communication and that the director notified the plaintiff's counsel and the commission of the communication.

[22] The court further stated that, "[i]n any regard, [Dodenhoff] recused herself from the [original] panel and was replaced. All three original panel members indicated that they had not communicated with each other concerning the ex parte communication. Therefore, once [Dodenhoff] was replaced, there remained no issue concerning the communication." (Footnotes omitted.) The court also observed that the commission issued the final decision, and there was no assertion by the plaintiff that the commission was affected by the ex parte communication.

In addition, in granting in part and denying in part the plaintiff's motion to stay the enforcement of the final decision, the court, *Hon. Henry S. Cohn*, judge trial referee, determined that "[t]he alleged ex parte communication by [Dodenhoff] did not violate . . . § 4-181 (a)."

(1) to any person or party "in connection with any issue of fact" or (2) to any party or the party's representative "in connection with any issue of law . . . ." General Statutes § 4-181 (a). If the ex parte communication does not concern any issue of fact or law, then § 4-181 (a) does not apply and no rebuttable presumption of prejudice under the statute arises. See *Henderson* v. *Dept. of Motor Vehicles*, 202 Conn. 453, 457–58, 521 A.2d 1040 (1987) ("[o]nce it has been demonstrated that a violation of § 4-181 has occurred, a [rebuttable] presumption of prejudice must be deemed to arise").

In the present case, the ex parte communication did not involve an issue of fact or law; rather, it was limited to Dodenhoff calling Tilles briefly to commend him on his argument at the January 23, 2020 administrative hearing. Accordingly, we conclude that the ex parte communication was not a prohibited communication pursuant to § 4-181 (a)[23] and, therefore, no rebuttable presumption of prejudice arose under the statute.[24] Thus, we reject the plaintiff's claim.

III

We next turn to the plaintiff's claim that the Superior Court improperly concluded that the commission did not abuse its discretion in revoking his dental license

[23] To be clear, our limited holding is that the ex parte communication did not fall within the ambit of § 4-181 (a). Our conclusion should not be interpreted as condoning the ex parte communication, which, as it appears, Dodenhoff and the commission recognized should not have occurred.

[24] Moreover, as the court observed, (1) Dodenhoff recused herself shortly after making the ex parte communication and did not take part in issuing the proposed decision or the final decision, and (2) the record reflects that Dodenhoff did not speak with the other two members of the original panel about the communication. In addition, Dodenhoff and the three members of the new panel all testified that, after making the ex parte communication, Dodenhoff did not communicate with the new panel regarding the issues presented in the administrative disciplinary proceeding. Thus, even if we assume that the ex parte communication created a rebuttable presumption of prejudice, there is ample evidence in the record rebutting that presumption.

as a disciplinary sanction. The plaintiff maintains that the commission's revocation of his license was "excessively harsh, unwarranted, and out of proportion to the violation" of failing to maintain patient records appropriately. This claim is unavailing.[25]

"Courts give administrative agencies broad discretion in the performance of their administrative duties, provided that no statute or regulation is violated. . . . If the penalty meted out is within the limits prescribed by law, the matter lies within the exercise of the [agency's] discretion and cannot be successfully challenged unless the discretion has been abused." (Citation omitted; internal quotation marks omitted.) *Recycling, Inc.* v.

[25] In a separate portion of the argument section of his brief, spanning less than one page, the plaintiff argues that the revocation of his dental license and the $10,000 civil penalty were arbitrary and capricious sanctions because (1) the statement of charges did not identify the patient records, and the dates thereof, that he failed to maintain properly, and (2) the department failed to present evidence as to which patient records were at issue. The commission argues that the plaintiff's claim is inadequately briefed. We agree.

In its decision dismissing the administrative appeal, the court addressed, and rejected, a claim raised by the plaintiff that the statement of charges failed to identify the patient records at issue sufficiently. As part of its analysis, the court noted that the $10,000 civil penalty was predicated on the commission's finding, made on the basis of the plaintiff's testimony, that he failed to maintain 200 patient files, including those subpoenaed by the department. The plaintiff does not address the court's reasoning or otherwise provide any substantive analysis in support of his claim. Accordingly, we conclude that the plaintiff's claim is inadequately briefed, and, therefore, we deem this claim abandoned. See, e.g., *Robb* v. *Connecticut Board of Veterinary Medicine*, supra, 204 Conn. App. 611 ("We repeatedly have stated that [w]e are not required to review issues that have been improperly presented to this court through an inadequate brief. . . . Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly. . . . [F]or this court judiciously and efficiently to consider claims of error raised on appeal . . . the parties must clearly and fully set forth their arguments in their briefs. . . . The parties may not merely cite a legal principle without analyzing the relationship between the facts of the case and the law cited." (Internal quotation marks omitted.)).

Commissioner of Energy & Environmental Protection, 179 Conn. App. 127, 144, 178 A.3d 1043 (2018).

The following additional procedural history is relevant to our resolution of this claim. In the final decision, the commission determined that (1) the applicable standard of care required the plaintiff to maintain patient records appropriately, (2) the plaintiff failed to maintain appropriately the records that were the subject of the department's investigation, of which the plaintiff had knowledge, and (3) the plaintiff's failure to maintain the records appropriately constituted incompetence or negligence toward patients in violation of § 20-114 (a) (2).

In addition, the commission determined that good cause existed for the imposition of disciplinary action pursuant to § 19a-17, explaining: "[The plaintiff] failed to maintain specific patient records that were subject to the [department's] subpoena and a court ordering such records to be produced. These records ceased to exist during the course of the department's ongoing investigation and the court proceedings. The commission does not find [the plaintiff's] explanation regarding the reason the records no longer exist, i.e., they were discarded on February 20, 2017, due to mold, to be credible.[26]

"[The plaintiff's] story simply does not add up. Knowing that there had been an initial water leak in the basement and the importance of these records, [the

[26] The commission cited testimony by the plaintiff providing that (1) in July, 2016, and again in February, 2017, the basement of his dental office flooded as a result of water leaks, (2) the day after the flooding event in February, 2017, the plaintiff's property manager, who was his son, discovered black mold growing on various items stored in the basement, (3) the plaintiff instructed his son to clean and to disinfect the basement and to discard any items contaminated with mold, and (4) the plaintiff's son discarded the contaminated items, which included the subpoenaed patient records.

plaintiff] does not move these records to another location for safeguarding. [The plaintiff] does not have copies of these records as instructed by risk management. When instructing his son to throw away anything in the basement with black mold on it in a dumpster, [the plaintiff] fails to mention to his son that such items may contain patient records, which records contain confidential, protected patient information, or records subject to the subpoena he had placed in the basement. [The plaintiff] does not instruct his son to open the boxes to see if they contain patient records and whether the contents in the boxes have mold on them before discarding. Such records in his basement not only included the records at issue in the subpoena but also included records for patients [who] had left his practice, were deceased, and/or other active patient records. . . . [The plaintiff] only raised the issue regarding the existence of the records on his motion to vacate the court's order of contempt [filed in the 2015 subpoena enforcement action], ordering him to pay a coercive fine of $1000 per day to the OAG from the date of the court's contempt order until the documents subject to the subpoena had been delivered, but at no time before. The commission finds that [the plaintiff] was not a credible witness and that his explanations and conduct were contrived and intentional." (Citations omitted; footnote added.)

In its decision dismissing the administrative appeal, the court rejected the plaintiff's claim that the revocation of his dental license was an excessive sanction, explaining that, "if the penalty imposed is explicitly authorized by the statutes in question, then generally it is within the agency's discretion to impose the authorized penalty. . . . In this matter, the plaintiff has not challenged the substantive findings of fact made by the commission, which findings are readily apparent from the record. Further, the plaintiff has not asserted that

the findings of fact fail to amount to substantial evidence in support of the statutory violations found. In view of the foregoing, the plaintiff may not now challenge the statutorily authorized penalty imposed, except to the extent the imposition of the penalty amounted to an abuse of discretion. . . .

"[T]he plaintiff either misunderstands or misstates the commission's findings. The commission did not find that the plaintiff lost the records despite his good faith efforts. Instead, the commission found that 'the [plaintiff's] explanation regarding the reason the records no longer exist, i.e., they were discarded on February 20, 2017 due to mold, is found not to be credible.' . . . Further, the commission found that the plaintiff's failure to maintain the records constituted 'incompetenc[e] or [negligence] toward patients' and 'grounds for disciplinary action pursuant to [§ 20-114 (a) (2)].' . . . The commission further found that the '[plaintiff] was not a credible witness and that his explanations and conduct were contrived and intentional.' . . . Accordingly, the commission did not find that the plaintiff lost the records through a good faith mistake but instead that the plaintiff purposefully obstructed the department's investigation into his billing practices and was not truthful with the department and before the commission. In view of the commission's findings, which are supported by substantial evidence in the record, the penalty of revocation of the plaintiff's dentistry license was not excessive and was within the statutory authority and discretion afforded to the commission. The imposition of the penalty of license revocation was not an abuse of discretion." (Citations omitted; footnote omitted.)

We agree with the court that the commission did not abuse its discretion in revoking the plaintiff's dental license. Section 20-114 (a) authorizes the commission to "take *any* of the actions set forth in section 19a-17 for *any* of the following [enumerated] causes," including

"proof that a practitioner has become unfit or incompetent or has been guilty of cruelty, incompetence, negligence or indecent conduct toward patients . . . ." (Emphasis added.) Section 19a-17 (a), in turn, authorizes the commission to "take *any* of the following [enumerated] actions, singly or in combination, based on conduct that occurred prior or subsequent to the issuance of a permit or a license upon finding the existence of good cause"; (emphasis added); including revoking the plaintiff's license. See General Statutes § 19a-17 (a) (1). After determining that the plaintiff's failure to maintain patient records properly, notwithstanding his knowledge of the department's investigation, violated § 20-114 (a) (2), the commission reasonably found that good cause existed to revoke the plaintiff's dental license given that the plaintiff "was not a credible witness," particularly with respect to his testimony that his son had discarded his patient records as a result of black mold contamination, and that "his explanations and conduct were contrived and intentional." Under these circumstances, we conclude that the commission's order revoking the plaintiff's dental license did not constitute an abuse of its discretion.[27]

[27] The plaintiff asserts that there was no evidence in the record demonstrating that any of his patients suffered harm as a result of his conduct, such that revocation of his dental license was unwarranted. We are not persuaded. As the court aptly stated in its decision dismissing the administrative appeal, "[t]he harm to patients that arises from a failure to maintain their medical records is self-evident—the lack of a record of the patient's medical condition and treatment is itself harmful." Likewise, as the court, *Hon. Henry S. Cohn*, judge trial referee, stated in granting in part and denying in part the plaintiff's motion to stay the enforcement of the final decision, "[t]he claim of lost records . . . affect[s] third parties, namely, the patients. . . . Even though patients did not file complaints with the [commission], the vital nature of such records, without replacement copies available, demonstrates the need for patient protections." Moreover, as the commission observed in the final decision, "[t]he purpose of patient records is to provide critical information regarding treatment provided to patients, patient history and progress and information to other dental providers should the patient transfer or should the dentists not be available for some reason. Without such records, patient care may suffer."

IV

Last, we address the plaintiff's claims that the Superior Court improperly (1) concluded that the original panel and the commission failed to act as impartial arbiters in violation of his right to due process[28] and (2) denied his motion to allow proof outside of the record. We disagree.

A

The plaintiff contends that, in contravention of his right to due process, the original panel and the commission failed to act as impartial arbiters. We are not persuaded.

"It is presumed that members of administrative boards acting in an adjudicative capacity are unbiased. . . . The party claiming bias bears the burden of proving a disqualifying interest." (Citation omitted; internal quotation marks omitted.) *Pet* v. *Dept. of Health Services*, 228 Conn. 651, 677, 638 A.2d 6 (1994). "To overcome the presumption of impartiality that attends administrative determinations, a plaintiff must demonstrate either actual bias or the existence of circumstances indicating a probability of . . . bias too high to be constitutionally tolerable. . . . One . . . statement of the applicable test for disqualification is whether a disinterested observer may conclude that [the agency] has in some measure adjudged the facts as well as the law of a particular case in advance of hearing it." (Citations omitted; internal quotation marks omitted.) *Transportation General, Inc.* v. *Dept. of Ins.*, 236 Conn. 75, 76–77, 670 A.2d 1302 (1996).

[28] In his brief on the merits of the administrative appeal, as well as in his appellate brief in this appeal, the plaintiff asserted that "the panel" had violated his right to due process by failing to act as an impartial arbiter. The plaintiff's claim is predicated on actions taken either by the original panel or by the commission. Thus, we discern the plaintiff's claim to be that both the original panel and the commission were biased against him.

The following additional procedural history is relevant to our resolution of this claim. In his brief on the merits of the administrative appeal, the plaintiff contended that the original panel and the commission had "fail[ed] to independently evaluate the facts and law involved. Instead, [they] collectively bowed to the normative pressures, and simply adopted the department's desired result . . . ." In support of this contention, the plaintiff argued that the original panel had (1) rejected his res judicata defense (a) "without having read or discussed the written submissions and the legal issues involved," (b) after "verbally voic[ing] [its] collective ignorance" of the doctrine of res judicata, and (c) after receiving a "cursory explanation" of the issue by the department's attorney, and (2) denied his request for a more specific statement of charges, thereby reversing a prior ruling purportedly granting the request. In addition, the plaintiff argued that the commission had (1) "failed to conduct a meaningful hearing on the ex parte communication" because, inter alia, it (a) failed to require the department to rebut the presumption of prejudice that purportedly arose from the communication, (b) limited his ability to cross-examine Dodenhoff as to the communication, and (c) failed to decide any substantive issue in the plaintiff's favor, and (2) adopted the new panel's proposed decision "immediately after submission by counsel, without discussion or meaningful review, by a simple vote." (Emphasis omitted.)

In its decision dismissing the administrative appeal, the court stated in relevant part that "[t]he plaintiff broadly asserts that the panel[29] was biased against [him] and favored the department's litigation outcome. However, the plaintiff provides no evidence other than rulings by the panel that were contrary to the plaintiff's requests. . . .

[29] We construe the court's use of the term "panel" here to encompass both the original panel and the commission. See footnote 28 of this opinion.

"The plaintiff here asserts that the panel's rulings on [his] res judicata issue, [his] request for a more specific statement of . . . charges, and [his] complaint of an ex parte communication were not handled in a manner thought by [him] to be appropriate. However, a review of the record does not reveal any evidence of bias in this regard. The panel ruled on each of these issues in a reasonable manner. In any regard, the court has reviewed each of these issues . . . and has determined that the panel ruled correctly on each of them."[30] (Citations omitted; footnote added.)

On appeal, the plaintiff iterates that the original panel and the commission "failed to exercise [their] judgment on every occasion," as evidenced by (1) the original panel's denial of his request for a more specific statement of charges without having reviewed the request and notwithstanding a prior order allegedly granting the request, (2) the original panel's rejection of his res judicata defense "without having read the written filings and without understanding the legal principle involved," and (3) the commission's conduct during the April 28, 2021 meeting. None of these examples convinces us that the original panel and the commission failed to act impartially.

With respect to the original panel's denial of the plaintiff's request for a more specific statement of charges, the record reflects that, during the January 21, 2020 administrative hearing, (1) Morales referred the original panel to the plaintiff's request and the department's objection thereto, (2) the parties presented argument on the merits of the request, (3) Katz and Reiss asked questions and/or commented on the merits of the

[30] The court further determined that, "during the administrative hearing[s], the plaintiff did not effectively raise alleged bias issues and seek recusals. A claim of bias must be raised in a timely manner. The failure to raise a claim of disqualification promptly after learning of the ground for such a claim ordinarily constitutes a waiver."

request, (4) Morales advised the original panel to deny the request, and (5) the original panel denied the request.[31] In addition, with respect to the original panel's rejection of the plaintiff's res judicata defense, the record reflects that, during the January 21, 2020 administrative hearing, (1) Morales directed the original panel's attention to the plaintiff's written submission raising his res judicata defense, as well as the department's reply denying the defense, (2) the parties presented argument on the applicability of the doctrine of res judicata, (3) Katz commented on the merits of the defense, (4) Morales advised the original panel to reject the defense and to proceed with the hearing, and (5) the original panel ruled that the doctrine of res judicata was inapplicable. Nothing in the record suggests that the original panel acted with bias in denying the plaintiff's request for a more specific statement of charges or in rejecting the applicability of his res judicata defense.

Likewise, nothing in the record evinces bias on the part of the commission during the April 28, 2021 meeting. During that meeting, the commission, in effect,

[31] Contrary to the plaintiff's representation, and as recognized by the commission in the final decision and by the court in its decision dismissing the administrative appeal, the original panel did not reverse a prior ruling granting the request for a more specific statement of charges. The record reveals that, on November 13, 2019, Jeffrey A. Kardys, an administrative hearings specialist for the commission, issued an order titled "Ruling on Request for Continuance" reflecting that a request filed by the plaintiff to continue the administrative hearings, scheduled at the time to begin on November 25, 2019, was granted. The ruling further indicated, without elaboration, that the plaintiff's request for a more specific statement of charges was also granted. During the January 21, 2020 administrative hearing, the plaintiff's counsel stated that he was pursuing the plaintiff's motion to dismiss the statement of charges on the basis of the department's failure to file a more specific statement of charges. Katz represented that the original panel was unaware of the November 13, 2019 order indicating that the plaintiff's request for a more specific statement of charges was granted. Morales then stated that, insofar as the November 13, 2019 ruling reflected that the request for a more specific statement of charges was granted, the ruling was "an administrative mistake" because the original panel had never ruled on that request. The original panel proceeded to consider the merits

granted the plaintiff's request for a hearing on the ex parte communication and heard testimony from Dodenhoff, Tilles, and the members of the new panel on the issue of the communication. The plaintiff's counsel cross-examined each witness, with the commission, over the objection of the plaintiff's counsel, limiting the scope of the cross-examination to the substance of the ex parte communication. Following the conclusion of the testimony, the parties presented oral argument and, thereafter, the commission deliberated off the record. In light of the above, there is no basis to conclude that the commission failed to act impartially during the April 28, 2021 meeting.[32]

In sum, we reject the plaintiff's claim that the original panel and the commission failed to act as impartial arbiters in violation of his right to due process.

B

The plaintiff also asserts that the court improperly denied his motion to allow proof outside of the record. This claim is unavailing.

Pursuant to § 4-183 (i), an administrative appeal "shall be conducted by the court without a jury and shall be confined to the record. If alleged irregularities in procedure before the agency are not shown in the record or if facts necessary to establish aggrievement are not shown in the record, proof limited thereto may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs." "An appeal from an administrative tribunal should ordinarily be determined upon the record of that tribunal, and

of the request for a more specific statement of charges, which it denied along with the plaintiff's related motion to dismiss.

[32] Insofar as the plaintiff maintains that the commission's bias is apparent because it failed to require the department to rebut the presumption of prejudice that purportedly arose from the ex parte communication, that position is untenable. See part II of this opinion.

only when that record fails to present the hearing in a manner sufficient for the determination of the merits of the appeal, or when some extraordinary reason requires it, should the court hear the evidence. . . . The determination of whether the trial court improperly denied the plaintiff's motion to supplement the record is made on the basis of the abuse of discretion standard." (Citations omitted; internal quotation marks omitted.) *Adriani* v. *Commission on Human Rights & Opportunities*, 220 Conn. 307, 325–26, 596 A.2d 426 (1991).

The following additional procedural history is relevant to our resolution of the plaintiff's claim. In his motion to allow proof outside of the record, the plaintiff sought to "submit proof regarding . . . irregularities in the procedure before the . . . commission, i.e., whether the . . . commission panel members had predetermined the issue of sanctions prior to hearing any evidence, the bias of the panel members, and [the] extent of the ex parte communication between . . . Tilles and . . . Dodenhoff . . . ." (Emphasis omitted.) Specifically, the plaintiff sought "limited discovery to depose" Dodenhoff, Tilles, and the new panel members "on the issues of predetermination and the ex parte communication." As the plaintiff argued, the record suggested that the issues in the administrative disciplinary proceeding had been predetermined in light of (1) the original panel's denial of his request for a more specific statement, (2) the original panel's rejection of his res judicata defense, (3) the commission's purported failure to hold a meaningful hearing on the ex parte communication, and (4) the commission's purported failure to exercise its independent judgment in entering the final decision. In addition, the plaintiff asserted that the commission failed to follow the procedures required under § 4-181 (a) by denying him a meaningful opportunity to cross-examine witnesses during the April 28, 2021 meeting. The court, *Hon. Henry S. Cohn*, judge

trial referee, denied the plaintiff's motion, concluding that the record was adequate for the plaintiff to present his claims.

The plaintiff contends that he established a factual predicate for seeking additional evidence outside of the record by demonstrating that the original panel and the commission failed to be impartial arbiters on the basis of (1) the original panel's denial of his res judicata defense, (2) the original panel's conduct during the administrative hearings, (3) the commission's conduct during the April 28, 2021 meeting, and (4) the ex parte communication. As we concluded in part IV A of this opinion, however, we are not convinced that the rulings by and conduct of the original panel and the commission demonstrated bias. Moreover, as we explained in part II of this opinion, no statutory presumption of prejudice arose as a result of the ex parte communication. Insofar as the plaintiff sought to assert that the original panel and the commission did not act as impartial arbiters, we agree with the court's reasonable determination that the record was adequate to raise those claims. Accordingly, we conclude that the court did not abuse its discretion in denying the plaintiff's motion to allow proof outside of the record.

The judgment is affirmed.

In this opinion the other judges concurred.

COMMISSIONER OF PUBLIC HEALTH *v.* ANTHONY COLANDREA (AC 45056)

Moll, Seeley and Pellegrino, Js.

Syllabus

The defendant, a dentist formerly licensed by the Department of Public Health, appealed to this court from the judgment of the trial court denying his motion to vacate a contempt enforcement order and granting

in part a motion to increase a per diem fine, filed by the plaintiff, the Commissioner of Public Health, that the court had ordered as a contempt sanction. The contempt enforcement order stemmed from the defendant's noncompliance with a subpoena duces tecum, issued by the plaintiff pursuant to statute (§ 19a-14 (a) (10)), that sought the production of certain patient records in connection with a fraudulent billing practices investigation. The court previously had granted a petition for the enforcement of the subpoena and ordered the defendant to release the records to the department, and this court affirmed that order. The trial court subsequently granted the plaintiff's motion to find the defendant in contempt for failure to comply with the subpoena and ordered the defendant to pay a coercive fine each day until he produced the records to the department. Thereafter, the court affirmed its finding of contempt but vacated the fine, and it issued supplemental orders that the defendant permit the department to search his dental office for the patient records and awarded attorney's fees and costs to the plaintiff pursuant to statute (§ 52-256b (a)). After the defendant appealed to this court, which affirmed the trial court's findings, the plaintiff filed two separate motions for contempt on the basis of the defendant's failure to comply with the court's supplemental orders. The trial court granted both motions and reinstated a per diem fine. After the Connecticut State Dental Commission (commission) revoked the defendant's dental license and ordered him to pay a civil penalty on the basis that he had failed to maintain patient treatment records appropriately, including the records sought by the subpoena at issue in the present subpoena enforcement action, the defendant filed a motion to vacate the enforcement order, claiming, inter alia, that the department had lost jurisdiction to regulate, investigate or discipline him. The plaintiff subsequently filed, inter alia, a motion to increase the per diem fine. Following an evidentiary hearing, the trial court denied the defendant's motion to vacate and granted in part the plaintiff's motion to increase the fine. On the defendant's appeal to this court, *held*:

1. The defendant could not prevail on his claim that the present subpoena enforcement action was precluded by the administrative disciplinary proceeding before the commission and was therefore barred pursuant to the doctrine of res judicata: there was no identity of claims in the administrative disciplinary proceeding, in which the department sought disciplinary action against the defendant on the basis of the department's allegation that the defendant, with knowledge of the department's investigation, failed to maintain patient records properly, and the present subpoena enforcement action, in which the plaintiff petitioned the Superior Court to enforce a subpoena seeking the production of patient records to aid in the department's investigation of alleged fraudulent billing practices by the defendant, as the two proceedings served wholly distinct purposes and involved different claims; moreover, the discipline sought and imposed in the administrative disciplinary proceeding,

namely the revocation of the defendant's dental license and the imposition of a civil penalty, was not available as relief in the present subpoena enforcement action, and there was no opportunity in the administrative disciplinary proceeding to litigate the claims raised in the present subpoena enforcement action.

2. The defendant could not prevail on his claim that the contempt proceeding against him was criminal, not civil, in nature: the plain purpose of the fine imposed as a sanction for the defendant's contempt was to coerce him to comply with the court's orders with regard to the patient records sought by the plaintiff, and the amount or frequency of the fine did not change the essence of the contempt; moreover, the court afforded the defendant opportunities to purge himself of contempt in order to avoid the imposition of the fine, the additional accumulation of the fine once imposed, and subsequent increases in the amount of the fine, and, therefore, this court construed the court's sanction to be designed to compel future compliance, with the fine being conditional and coercive; furthermore, the other factors on which the defendant relied in asserting that the contempt sanction was criminal in nature were unavailing, as, although the plaintiff sought incarceration as a sanction for the defendant's continuous noncompliance with the court's orders, the court ultimately declined to incarcerate the defendant and, in any event, incarceration is a viable civil sanction, the court's award of attorney's fees with regard to its contempt finding did not alter the nature of the contempt and was authorized by § 52-256b (a), and there was no tangible connection between the disciplinary sanctions imposed on the defendant in the administrative disciplinary proceeding and the contempt in the present subpoena enforcement action.

3. The defendant could not prevail on his claim that the plaintiff lacked the authority pursuant to § 19a-14 (a) (10) to continue seeking to enforce the subpoena: contrary to the defendant's assertion that the investigation underlying the subpoena issued by the plaintiff had concluded as a result of the commission's decision in the administrative disciplinary proceeding, the department's investigation remained pending and the sanctions entered against the defendant in the administrative disciplinary proceeding for his failure to maintain patient records appropriately did not affect the department's investigation into his alleged fraudulent billing practices; moreover, insofar as the defendant raised the discrete argument that the revocation of his dental license necessarily terminated the investigation, that position was belied by the plain language of § 19a-14a, which provides that any person who is the subject of an investigation pursuant to, inter alia, § 19a-14 (a) (10), while holding a professional license issued by the department or having held such a license within eighteen months of the commencement of such investigation or disciplinary action, shall be considered to hold a valid license for purposes of such investigation or disciplinary action, and, because the department initiated its investigation into the defendant's alleged fraudulent billing

practices well before the commission revoked his dental license, the defendant was considered to hold a valid license for purposes of the investigation that led to the issuance of the subpoena.

Argued May 9—officially released September 19, 2023

Procedural History

Petition for an order to enforce a subpoena duces tecum, brought to the Superior Court in the judicial district of Hartford and tried to the court, *Robaina*, *J.*; judgment granting the petition, from which the defendant appealed to this court, *DiPentima*, *C. J.*, and *Alvord* and *Lavery*, *Js.*, which affirmed the judgment of the trial court; thereafter, the court, *Sheridan*, *J.*, granted the plaintiff's motion for contempt; subsequently, the court, *Sheridan*, *J.*, granted in part the defendant's motion to vacate, from which the defendant appealed to this court, *Elgo*, *Cradle* and *Alexander*, *Js.*, which affirmed the judgment of the trial court; thereafter, the court, *Sheridan*, *J.*, granted two motions for contempt filed by the plaintiff; subsequently, the court, *Sheridan*, *J.*, granted in part the plaintiff's motion to increase the contempt fine and denied the defendant's motion to vacate, from which the defendant appealed to this court. *Affirmed.*

A. Paul Spinella, for the appellant (defendant).

Susan Castonguay, assistant attorney general, with whom, on the brief, was *William Tong*, attorney general, for the appellee (plaintiff).

Opinion

MOLL, J. The defendant, Anthony Colandrea, appeals from the judgment of the trial court (1) denying his motion to vacate a contempt enforcement order, which stemmed from a contempt judgment rendered against him following his noncompliance with a subpoena duces tecum issued by the plaintiff, the Commissioner

of Public Health,[1] for certain records of his dental practice, and (2) granting in part the plaintiff's motion to increase a per diem fine that the court ordered as a contempt sanction. On appeal, the defendant claims that the court's judgment constitutes error because (1) the present subpoena enforcement action was barred by the doctrine of res judicata, (2) the contempt proceeding against him was criminal in nature, such that (a) he was entitled to several rights afforded by the federal constitution and (b) the Office of the Attorney General, which represents the plaintiff, lost its statutory authority to continue seeking to enforce the subpoena on behalf of the plaintiff, and (3) the investigation with respect to which the plaintiff issued the subpoena has been concluded, thereby depriving the plaintiff of its statutory authority to continue prosecuting the present subpoena enforcement action.[2] We disagree and, accordingly, affirm the judgment of the trial court.

The following facts and procedural history, as set forth by this court in a prior opinion or as undisputed in the record, are relevant to our disposition of this appeal. "[The defendant] was licensed as a dentist and has been a self-employed dentist in Connecticut since 1980. In 2014, [the defendant] was the subject of an investigation commenced by the [plaintiff]. United Healthcare, a health insur[ance] provider, contracted with an auditing firm, Verisk Analytics, to conduct audits of various healthcare providers to investigate potential fraudulent billing activities.

"After reviewing patient billings submitted by the [defendant] to United Healthcare billing, Verisk Analytics attempted to obtain certain patient records from

[1] The Commissioner of Public Health acts on behalf of the Department of Public Health, and references in this opinion to the department include the commissioner.

[2] For ease of discussion, we address the defendant's claims in a different order than they are presented in his appellate brief.

[the defendant]. [The defendant] refused to provide the requested records, leading Verisk Analytics to refer the matter to the Office of the Attorney General, which subsequently referred the matter to the [plaintiff].

"On August 27, 2014, the . . . practitioner licensing and investigations section [of the Department of Public Health (department)] initiated an investigation of allegations of fraudulent billing activities by [the defendant]. On November 16, 2015, [the plaintiff] issued a subpoena duces tecum to [the defendant] for complete copies of all records for thirty-one patients identified by Verisk Analytics. When [the defendant] refused to comply with the subpoena, the present [subpoena enforcement] action . . . was initiated.[3]

"On December 10, 2015, the plaintiff . . . filed a petition for enforcement of [the] November 16, 2015 subpoena duces tecum served [on] [the defendant] seeking production of certain patient records in connection with an investigation of possible fraudulent billing practices. Th[e] [trial] court, *Robaina*, *J.*, conducted a hearing regarding the petition. On January 25, 2016, the court granted [the plaintiff's] petition and overruled the defendant's objection thereto, ordering the defendant to release thirty-one subpoenaed patient records to [the department]. The defendant appealed that decision and, on August 1, 2017, in a per curiam decision, [this court] affirmed the [trial court's] granting of the petition for enforcement of [the] subpoena. *Commissioner of Public Health* v. *Colandrea*, 175 Conn. App. 254, 167 A.3d 471, [cert. denied, 327 Conn. 957, 172 A.3d 204 (2017)]. The defendant petitioned [our] Supreme Court for certification. On November 8, 2017, [our] Supreme Court

[3] In 2018, the plaintiff filed a petition to enforce a separate subpoena duces tecum seeking the production of an additional twenty patient records. See *Commissioner of Public Health* v. *Colandrea*, Superior Court, judicial district of Hartford, Docket No. CV-18-6088830-S. That proceeding is not relevant to this appeal.

denied the defendant's petition. *Commissioner of Public Health* v. *Colandrea*, 327 Conn. 957, 172 A.3d 204 (2017).

"On November 20, 2017, [the plaintiff] moved the court to find the defendant in contempt for failing to comply with the [subpoena]. . . . After [a] hearing, counsel for [the defendant] filed a motion for [a] protective order, based [on] a claim that [the] production of [the] documents in response to the subpoena would violate the fifth amendment prohibition against self-incrimination. The court [*Sheridan*, *J.*] denied the motion for [a] protective order and, on December 10, 2017, declared [the defendant] in contempt of court and ordered the defendant to pay a coercive fine of [$1000] per day to the Office of the Attorney General from the date of the order until the documents which are the subject of the plaintiff's petition for [the] enforcement of [the] subpoena were delivered to the [department]. . . .

"On December 15, 2017, new counsel for the defendant . . . appeared in the case and filed [a] motion to vacate [the] order [of contempt]. In the motion, the defendant conceded that he had failed to produce the subpoenaed patient records to [the department] but nonetheless moved to vacate the coercive fine based on the impossibility of complying with the court order. The defendant asserted that he could not comply with the court's order because the documents are no longer in existence. The defendant explained that the subpoenaed documents were destroyed under circumstances which the defendant alleged were outside his knowledge or control. . . .

"On January 2, 2019, [after conducting evidentiary hearings] the court issued a memorandum of decision, in which it granted in part and denied in part the defendant's motion to vacate the prior contempt judgment.

The court affirmed its prior finding of contempt but vacated the $1000 per day fine. The court issued supplemental orders that the defendant turn over any of the relevant records and that he 'permit [the department] full and complete access to [his practice] for the purposes of inspecting and verifying the manner of storage, existence and location of stored patient records and other documents.' The court also awarded attorney's fees and costs to the plaintiff pursuant to General Statutes § 52-256b (a),[4] and it invited '[t]he parties [to] contact the court to schedule a hearing to present evidence and argument as to the amount of attorney's fees to be awarded.' " (Footnotes added.) *Commissioner of Public Health* v. *Colandrea*, 202 Conn. App. 815, 817–20, 247 A.3d 193, cert. denied, 336 Conn. 930, 248 A.3d 1 (2021). The defendant appealed from the January 2, 2019 decision, which this court affirmed on February 23, 2021. Id., 826. Thereafter, the defendant filed a petition for certification to appeal from this court's decision, which our Supreme Court denied on April 6, 2021. *Commissioner of Public Health* v. *Colandrea*, 336 Conn. 930, 248 A.3d 1 (2021).

On April 23, 2021, the plaintiff filed a motion for contempt on the basis of the defendant's failure to comply with the court's supplemental orders entered on January 2, 2019 (supplemental orders). The plaintiff asserted that (1) on April 20, 2021, two department investigators attempted to inspect the office of the defendant's dental practice in Rocky Hill, (2) the defendant permitted the investigators to access the basement of the office via an outside hatchway, wherein they did not locate any patient files, and (3) despite several

[4] General Statutes § 52-256b (a) provides: "When any person is found in contempt of any order or judgment of the Superior Court, the court may award to the petitioner a reasonable attorney's fee and the fees of the officer serving the contempt citation, such sums to be paid by the person found in contempt."

requests, and in violation of the supplemental orders, the defendant refused to allow the investigators to access the rest of the office. On May 20, 2021, the plaintiff filed another motion for contempt, asserting that the defendant had violated the supplemental orders by failing to produce any patient records. On June 21, 2021, following two evidentiary hearings, the court granted the plaintiff's motions for contempt, concluding that (1) the supplemental orders were clear and unambiguous and (2) the defendant had "failed or refused to produce the specified patient records and, through the deliberate and calculated use of various subterfuges, continues to deny the department full and complete access to all the patient records, and has therefore wilfully disobeyed the court's order[s]." As a sanction, "to coerce the defendant into compliance with its order[s]," the court ordered that, unless he complied with the supplemental orders within ten days, the defendant was required to pay to the plaintiff a fine of $1000 per day, pending compliance.[5] The court further ordered that the plaintiff could petition the court to incarcerate the defendant if he failed (1) to comply with the supplemental orders within thirty days and (2) to pay the fine.[6]

On July 8, 2021, the defendant filed a motion to vacate the June 21, 2021 enforcement order, asserting that (1) the department had "lost jurisdiction to regulate, investigate, or discipline [him]" following the revocation of his dental license on April 28, 2021,[7] (2) he no

[5] The court noted that the plaintiff had not requested compensation or submitted evidence of actual loss to warrant a compensatory fine.

[6] The court stated that the plaintiff had "suggested the sanction of imprisonment, arguing that the defendant will continue to play a cat and mouse game of hiding and withholding patient records until and unless the court imposes the ultimate sanction of imprisonment. The court declines at this time to impose the sanction of imprisonment but will not rule it out in the future should circumstances require it."

[7] On April 28, 2021, the Connecticut State Dental Commission revoked the defendant's dental license and ordered him to pay a $10,000 civil penalty on the basis of its conclusions that the department demonstrated (1) that the defendant was " 'guilty of incompetence or negligence toward patients' "

longer maintained a dental practice or a dental office, such that the court's supplemental order permitting the department to search his office was moot, and (3) the supplemental orders authorized the plaintiff to access records that exceeded the scope of the subpoena. On July 16, 2021, the plaintiff filed an objection to the defendant's motion to vacate. On the same day, the plaintiff filed motions (1) to increase the fine to $5000 per day and (2) to incarcerate the defendant, with both motions predicated on the defendant's continued failure to comply with the supplemental orders. On August 27, 2021, the defendant filed an objection to the plaintiff's motion to incarcerate, and, on October 5, 2021, the defendant filed a reply memorandum to the plaintiff's objection to his motion to vacate.

On October 12, 2021, following an evidentiary hearing held on October 6, 2021, the court issued a decision adjudicating the parties' motions. The court denied the defendant's motion to vacate the June 21, 2021 enforcement order, stating that "the defendant's licensing status does not extinguish the pending investigation of his dental practice or negate the court's inherent power to coerce compliance with its orders. See General Statutes § 19a-14a." The court also denied the plaintiff's motion to incarcerate the defendant, determining that incarceration "would be grossly disproportionate to the ends the court is attempting to achieve" because, as a result

in violation of General Statutes § 20-114 (a) (2) as a result of his failure to maintain patient treatment records appropriately, including the records sought by the subpoena at issue in the present subpoena enforcement action, notwithstanding having knowledge of the department's investigation, and (2) good cause for the commission to discipline the defendant pursuant to General Statutes § 19a-17. The defendant filed an administrative appeal from the commission's decision, which the trial court, *Cordani*, *J.*, dismissed. The defendant appealed from the judgment dismissing the administrative appeal to this court, which we affirmed in a separate opinion released today. See *Colandrea* v. *State Dental Commission*, 221 Conn. App. 597, A.3d (2023).

of "the defendant's suppressed immune response,[8] incarceration presents a substantially increased risk for serious illness or possible death."[9] (Footnote added.) With respect to the plaintiff's motion to increase the fine, the court declined to increase the fine to $5000 per day; however, the court determined that "an increased sanction is warranted" because "the contempt is continuing despite the $1000 per day coercive fine . . . ." Accordingly, the court ordered that, effective October 19, 2021, the June 21, 2021 enforcement order would be superseded by a new order requiring the defendant (1) to preserve, to maintain, and to secure all patient records related to his dental practice, with all such records to be kept at his office unless otherwise ordered by the court, and with any such records previously removed from his office to be returned within five days, (2) to provide to the plaintiff "full and complete access to [his office] (including the basement and all garages and outbuildings) for the purposes of inspecting and verifying the manner of storage, existence and location of patient records and other documents related to his dental practice," and (3) to produce "any records—of any sort whatsoever, whether paper or electronic/computer records—from any time in the past to the present, that are in his possession and control and that relate to the thirty-one patients identified in the November 26, 2015 subpoena." The court further ordered that, unless the defendant complied with its new order, the fine would be increased to (1) $1500 per day effective October 19, 2021, (2) $2000 per day effective November 19, 2021, and (3) $2500 per day effective December

[8] During the October 6, 2021 evidentiary hearing, both parties represented, and the court acknowledged, that the defendant had a heart transplant in 2015.

[9] On September 30, 2021, the plaintiff filed a motion to modify the June 21, 2021 enforcement order to permit it to seek imprisonment as a sanction solely on the basis of the defendant's noncompliance with the supplemental orders. The court denied that motion.

19, 2021.[10] This appeal followed.[11] Additional facts and procedural history will be set forth as necessary.

On appeal, the defendant claims that the court's denial of his motion to vacate the June 21, 2021 enforcement order and its granting in part of the plaintiff's motion to increase the fine were improper because (1) the present subpoena enforcement action was barred by the res judicata effect of the decision by the Connecticut State Dental Commission (commission) revoking his dental license and assessing against him a $10,000 civil penalty; see footnote 7 of this opinion; (2) the contempt proceeding against him was criminal in nature, such that (a) he was entitled to several rights afforded by the federal constitution[12] and (b) the Office of the Attorney General, in representing the plaintiff, lost its statutory authority to continue prosecuting the present subpoena enforcement action on the plaintiff's behalf,[13] and (3)

[10] The court also determined that evidence was presented "demonstrat[ing] that persons other than [the defendant] are acting at [his] direction to prevent or obstruct the department's efforts" to access the defendant's office as authorized by the supplemental orders. The court ordered that anyone "acting in concert with the defendant . . . or otherwise having actual knowledge of [its new] order [is] enjoined, restrained and prohibited from hindering, obstructing, or preventing the [plaintiff] . . . from conducting inspections that have been ordered by [the] court."

[11] On May 4, 2021, following the court's award of statutory attorney's fees on January 2, 2019, the plaintiff filed a motion seeking $290,211.92 in attorney's fees and costs. On April 20, 2022, the court awarded the plaintiff $159,500 in attorney's fees. The defendant has not appealed from that decision.

[12] In particular, the defendant refers to his constitutional rights (1) to be advised of the charges against him, (2) to the assistance of counsel, (3) to a jury trial, and (4) to be presumed innocent.

[13] General Statutes § 3-125 provides in relevant part: "The Attorney General shall have general supervision over all legal matters in which the state is an interested party, except those legal matters over which prosecuting officers have direction. He shall appear for the state, the Governor, the Lieutenant Governor, the Secretary, the Treasurer and the Comptroller, and for all heads of departments and state boards, commissioners, agents, inspectors, committees, auditors, chemists, directors, harbor masters, and institutions and for the State Librarian and the Connecticut Pilot Commission in all suits and other civil proceedings, except upon criminal recognizances and

the plaintiff lost its statutory authority to continue seeking to enforce the subpoena because the investigation that led to the issuance of the subpoena has been concluded following the commission's decision. We address each claim in turn.

I

We first turn to the defendant's claim that the present subpoena enforcement action was barred pursuant to the doctrine of res judicata. The defendant maintains that the administrative disciplinary proceeding, which resulted in the revocation of his dental license and the assessment of a $10,000 civil penalty against him, had a preclusive effect on the present subpoena enforcement action. We disagree.

As a preliminary matter, we note that the trial court did not adjudicate the defendant's res judicata claim. The defendant raised the issue of res judicata in his reply memorandum to the plaintiff's objection to his motion to vacate the June 21, 2021 enforcement order. During the evidentiary hearing held on October 6, 2021, the parties presented argument on the res judicata issue, which the court acknowledged without resolving on the merits. The court's October 12, 2021 decision is silent as to the res judicata issue. It is well settled, however, that "the applicability of res judicata . . . presents a question of law over which we employ plenary review." (Internal quotation marks omitted.) *Wilmington Trust, National Assn.* v. *N'Guessan*, 214 Conn. App. 229, 236, 279 A.3d 310 (2022). Accordingly, on the basis of our plenary review of the defendant's res

bail bonds, in which the state is a party or is interested, or in which the official acts and doings of said officers are called in question, and for all members of the state House of Representatives and the state Senate in all suits and other civil proceedings brought against them involving their official acts and doings in the discharge of their duties as legislators, in any court or other tribunal, as the duties of his office require; and all such suits shall be conducted by him or under his direction. . . ."

judicata claim on appeal, we conclude as a matter of law that the present subpoena enforcement action was not barred by the doctrine of res judicata. See id., 234 ("[a]lthough the [trial] court did not address [the defendant's res judicata and collateral estoppel] arguments, on the basis of our plenary review, we conclude as a matter of law that the defendant cannot prevail on his claims of res judicata and collateral estoppel").

"Res judicata, or claim preclusion, express[es] no more than the fundamental principle that once a matter has been fully and fairly litigated, and finally decided, it comes to rest. . . . Generally, for res judicata to apply, four elements must be met: (1) the judgment must have been rendered on the merits by a court of competent jurisdiction; (2) the parties to the prior and subsequent actions must be the same or in privity; (3) there must have been an adequate opportunity to litigate the matter fully; and (4) the same underlying claim must be at issue." (Internal quotation marks omitted.) Id., 236.

"Under certain circumstances, the determination of an administrative tribunal will have res judicata effect with respect to any subsequent claims made by a party to that agency determination. As a general proposition, the governing principle is that administrative adjudications have a preclusive effect when the parties have had an adequate opportunity to litigate. . . . [A] valid and final adjudicative determination by an administrative tribunal has the same effects under the rules of res judicata, subject to the same exceptions and qualifications, as a judgment of a court." (Internal quotation marks omitted.) *Evans* v. *Tiger Claw, Inc.*, 141 Conn. App. 110, 115, 61 A.3d 533, cert. denied, 310 Conn. 926, 78 A.3d 146 (2013), and cert. denied, 310 Conn. 926, 78 A.3d 856 (2013).

The following additional procedural history is relevant to our resolution of the defendant's claim. In May,

2019, while the appeal in *Commissioner of Public Health* v. *Colandrea*, supra, 202 Conn. App. 815, was pending, the department presented the commission with a statement of charges alleging that, "[s]ubsequent to a date in 2014, and with knowledge of the department's request for patient records as part of an ongoing investigation, [the defendant] failed to appropriately maintain treatment records for multiple patients," such that the defendant had violated General Statutes § 20-114 (a) (2) and, therefore, was subject to disciplinary action pursuant to General Statutes §§ 19a-17[14] and 20-114 (a). The defendant asserted the doctrine of res judicata as a special defense, alleging that he was "currently subject to a disciplinary action for the same acts and omissions" in the present subpoena enforcement action as were at issue in the administrative disciplinary proceeding. The res judicata defense was rejected, and the commission ordered the revocation of the defendant's dental license and the assessment of a $10,000 civil penalty after determining that the department sustained its burden to prove that the defendant had failed to maintain the treatment records appropriately, including those subject to the subpoena, notwithstanding his knowledge of the department's investigation.

In May, 2021, the defendant filed an administrative appeal from the commission's decision to the Superior Court. One of the grounds for the appeal was that the present subpoena enforcement action had a preclusive effect on the administrative disciplinary proceeding. In its decision dismissing the administrative appeal, the court, *Cordani*, *J.*, determined that the doctrine of res judicata was inapplicable.[15]

[14] Section 19a-17 was amended by No. 19-118, § 7, of the 2019 Public Acts and by No. 22-88, § 2, of the 2022 Public Acts, which made changes to the statute that are not relevant to this appeal. Accordingly, we refer to the current revision of the statute.

[15] In addition, in a ruling granting in part and denying in part a motion filed by the defendant to stay the enforcement of the decision revoking his dental license and assessing the $10,000 civil penalty against him, the court,

The defendant contends that the present subpoena enforcement action was barred pursuant to the doctrine of res judicata in light of the commission's decision in the administrative disciplinary proceeding revoking his dental license and assessing a $10,000 civil penalty against him. This claim is untenable under the same rationale set forth in a separate opinion, released today, in which we rejected the res judicata claim raised by the defendant in that appeal. See *Colandrea* v. *State Dental Commission*, 221 Conn. App. 597, 611–15, A.3d (2023).

As we explained in *Colandrea* v. *State Dental Commission*, supra, 221 Conn. App. 597, "[p]ut simply, the administrative disciplinary proceeding and the [present] subpoena enforcement action served wholly distinct purposes and involved different claims. In the administrative disciplinary proceeding, the department sought disciplinary action against the [defendant] pursuant to §§ 19a-17 and 20-114 (a) (2) on the basis of the department's allegation that the [defendant], with knowledge of the department's investigation, failed to maintain patient records properly. The discipline sought and imposed in the administrative disciplinary proceeding—the revocation of the [defendant's] dental license and the imposition of a civil penalty—was not available as relief in the [present] subpoena enforcement action. See General Statutes § 19a-17 (a) (commission 'may take any of the following actions, singly or in combination, based on conduct that occurred prior or subsequent to the issuance of a permit or a license upon finding the existence of good cause: (1) [r]evoke a practitioner's license or permit . . . (7) [a]ssess a civil penalty of up to twenty-five thousand dollars'); see also General Statutes § 20-114 (a) ('[t]he Dental Commission may take any of the actions set forth in

Hon. Henry S. Cohn, judge trial referee, determined that the doctrine of res judicata was inapplicable.

section 19a-17 for any of [several enumerated causes]'). In contrast, in the [present] subpoena enforcement action, the department petitioned the Superior Court to enforce a subpoena seeking the production of patient records to aid in the department's investigation of alleged fraudulent billing practices by the [defendant]. See General Statutes § 19a-14 (a) (10) ('[i]f any person refuses to appear, to testify or to produce any book, record or document when so ordered, a judge of the Superior Court may make such order as may be appropriate to aid in the enforcement of this section').[16] The contempt proceedings and enforcement orders that followed stemmed from the [defendant's] noncompliance with the court's orders.

"In sum, we conclude that there was (1) no identity of claims in the administrative disciplinary proceeding and the [present] subpoena enforcement action and (2) no opportunity in the [present] subpoena enforcement action to litigate the claims raised in the administrative disciplinary proceeding." (Footnote in original.) Id., 613–15. Likewise, we conclude that the defendant's res judicata claim raised in this appeal fails because there was (1) no identity of claims in the administrative disciplinary proceeding and the present subpoena enforcement action and (2) no opportunity in the administrative disciplinary proceeding to litigate the claims raised in the present subpoena enforcement action.[17]

[16] "Section 19a-14 was amended by No. 19-117, §§ 173, 181 and 201 of the 2019 Public Acts; by No. 21-121, § 20, of the 2021 Public Acts; and by No. 22-88, § 1, of the 2022 Public Acts, which made changes to the statute that are not relevant to this appeal. Accordingly, we refer to the current revision of the statute." *Colandrea* v. *State Dental Commission*, supra, 221 Conn. App. 614 n.16.

[17] As he did in *Colandrea* v. *State Dental Commission*, supra, 221 Conn. App. 597, the defendant contends in the present case "that all four elements of the doctrine of res judicata are satisfied . . . . The elements of the doctrine of res judicata are conjunctive. See *Wilmington Trust, National Assn.* v. *N'Guessan*, supra, 214 Conn. App. 236 ('[g]enerally, for res judicata to apply, *four elements must be met*' . . .). Because we conclude that the third and fourth elements have not been satisfied, we need not discuss the

II

The defendant next claims that the contempt proceeding against him was criminal in nature, such that (1) he was guaranteed a panoply of federal constitutional protections and (2) the Office of the Attorney General lacked the statutory authority to continue prosecuting the present subpoena enforcement action on behalf of the plaintiff. We are not persuaded.

The following additional procedural history is relevant to our resolution of the defendant's claim. In his reply memorandum to the plaintiff's objection to his motion to vacate the June 21, 2021 enforcement order, the defendant contended that the fine imposed on him as a contempt sanction "no longer serve[d] a coercive purpose but [was] intended to punish [him]," citing "the severity of the [sanction], the unlimited and recurring fines, the imposition of attorney's fees, the threat of incarceration, as well as the [administrative] disciplinary [proceeding initiated against him]." The defendant maintained that (1) as of October 5, 2021, he had paid a total of $110,000 in fines,[18] (2) his dental license had been suspended and he had been assessed a $10,000 civil penalty, and (3) the plaintiff was seeking (a) $290,211.92 in attorney's fees; see footnote 11 of this opinion; (b) to increase the fine to $5000 per day, and (c) to incarcerate him.

During the evidentiary hearing held on October 6, 2021, the court, *Sheridan, J.*, addressed the defendant's assertion regarding the alleged criminal nature of the

remaining elements." (Emphasis in original.) *Colandrea* v. *State Dental Commission*, supra, 615 n.17.

[18] During the October 6, 2021 evidentiary hearing, the parties and the court acknowledged that, to date, the defendant had remitted payments totaling $110,000, which, by the calculation of the plaintiff's counsel, equaled the sum of the fines accrued through October 18, 2021. In their respective appellate briefs, the parties represent that the defendant has paid a total of $116,000 in fines.

contempt, stating: "I don't see that . . . the passage of time is going to make [the fine] punitive because it is conditional. It is conditioned on the fact that the moment [the defendant] complies with the court's order, he stops . . . paying the $1000 a day. What is making it so expensive and what is making it so onerous for [the defendant] is his own refusal to comply with my order." The court continued: "[The fine] is limitless only if [the defendant] chooses to make it limitless. He has the means within . . . his power to end the $1000 a day sanction should he choose to do so. He, for his own reasons, which I respect, has chosen not to. But the idea that it's limitless is not—it's not the court's intention. My intention is that it . . . hopefully would . . . be limited by swift and certain compliance. . . . I have no interest in punishing [the defendant]. I have no interest whatsoever. I do have an interest, and I think an obligation to enforce a lawfully issued subpoena, which has been reviewed on appeal and it has been affirmed on appeal. . . . I don't think, absent . . . some other circumstances I'm not aware of, that's an obligation I shouldn't walk away from. . . . I don't—I'm trying to avoid punishing him. That is someone else's job. My job is simply to enforce the subpoena that requests production of—or inspection of these records." The court further stated that it had "no evidence that [the defendant is] not able to [purge himself]," but instead that it had "some reason to infer from the fact that he has [paid $110,000 to date] that he is able to pay my coercive sanction, which almost begs the question of [whether] I made the coercive sanction coercive enough." Additionally, the court (1) questioned whether its award of attorney's fees to the plaintiff had any bearing on the nature of the contempt, and (2) stated that it did not intend to grant the plaintiff's request to incarcerate the defendant.[19]

[19] In its October 12, 2021 decision, the court did not address further the defendant's claim that the contempt sanction was criminal in nature.

The defendant asserts that "[t]he amount of the [fine], the recurring nature of the [fine], the enormous amount of attorney's fees the [plaintiff sought], [the plaintiff's] threat to incarcerate [him], combined with the sanctions imposed in the parallel administrative disciplinary proceeding, all serve to establish that this [subpoena] enforcement action has transformed into a criminal contempt proceeding." This claim is unavailing.

"Contempt is a disobedience to the rules and orders of a court which has power to punish for such an offense." (Internal quotation marks omitted.) *Medeiros* v. *Medeiros*, 175 Conn. App. 174, 195, 167 A.3d 967 (2017). "Contempt is either civil or criminal in nature. . . . [C]riminal contempt is conduct that is directed against the dignity and authority of the court. In contrast, civil contempt is conduct directed against the rights of the opposing party." (Citation omitted; internal quotation marks omitted.) *Quaranta* v. *Cooley*, 130 Conn. App. 835, 841, 26 A.3d 643 (2011). "In distinguishing between the two, much weight has been placed on the character and purpose of the punishment." (Internal quotation marks omitted.) Id., 841–42; see also *Ullmann* v. *State*, 230 Conn. 698, 709, 647 A.2d 324 (1994) ("[C]onclusions about the civil or criminal nature of a contempt sanction are properly drawn, not from the subjective intent of a [s]tate's laws and its courts . . . but from an examination of the character of the relief itself . . . . Accordingly, a court's power to hold a party in civil or criminal contempt is not limited by the nature of the offense. Rather, it is the nature of the relief itself that is instructive in determining whether a contempt is civil or criminal." (Citation omitted; internal quotation marks omitted.)).

"A contempt is considered civil when the punishment is wholly remedial, serves only the purposes of the complainant, and is not intended as a deterrent to offenses against the public. . . . Sanctions for civil

contempt may be either a fine or imprisonment; the fine may be remedial or it may be the means of coercing compliance with the court's order and compensating the complainant for losses sustained. . . . In criminal contempt the sanction is punitive in order to vindicate the authority of the court." (Internal quotation marks omitted.) *Quaranta* v. *Cooley*, supra, 130 Conn. App. 841–42. "A contempt fine is civil if it either coerce[s] the defendant into compliance with the court's order, [or] . . . compensate[s] the complainant for losses sustained. . . . Where a fine is not compensatory, it is civil only if the contemnor is afforded an opportunity to purge." (Internal quotation marks omitted.) *In re Jeffrey C.*, 261 Conn. 189, 197–98, 802 A.2d 772 (2002). Whether the contempt at issue was civil or criminal presents a question of law over which we exercise plenary review. See *Monsam* v. *Dearington*, 82 Conn. App. 451, 456 and n.8, 844 A.2d 927 (2004) (applying de novo review in determining "whether the [trial court's] contempt finding was criminal in nature or, as the trial court found, civil in nature").

We conclude that the contempt in the present subpoena enforcement action was civil in nature. The plain purpose of the fine imposed as a sanction for the defendant's contempt was to coerce him to comply with the court's orders vis-à-vis the patient records sought by the plaintiff. We are not convinced that the amount or frequency of the fine—starting at $1000 per day and gradually increasing to $2500 per day—changed the essence of the contempt. See *International Business Machines Corp.* v. *United States*, 493 F.2d 112, 116 (2d Cir. 1973) ("[W]e fail to see how the magnitude of such a sum [namely, a fine of $150,000 per day] can turn a civil contempt into a criminal one, any more than the sending of an individual to jail turns a civil contempt into criminal contempt. . . . In neither case does the

severity of the penalty change the nature of the contempt. . . . It is not as if there were any punitive aspect in this contingent fine. Indeed, this is a classic case of using the court's power to afford full remedial relief . . . so as to enforce the right of the opposing party . . . ." (Citations omitted; internal quotation marks omitted.)), cert. denied, 416 U.S. 995, 94 S. Ct. 2409, 40 L. Ed. 2d 774 (1974). Moreover, the court afforded the defendant opportunities to purge himself of contempt in order to avoid (1) the imposition of the fine, (2) the additional accumulation of the fine once imposed, and (3) subsequent increases in the amount of the fine. Thus, we construe the court's sanction to be "designed to compel future compliance"; (internal quotation marks omitted) *Quaranta* v. *Cooley*, supra, 130 Conn. App. 842; with the fine being "conditional and coercive . . . ."[20] (Emphasis omitted; internal quotation marks omitted.) Id., 843.

[20] The defendant cites *International Union, United Mine Workers of America* v. *Bagwell*, 512 U.S. 821, 114 S. Ct. 2552, 129 L. Ed. 2d 642 (1994), and *United States* v. *Twentieth Century Fox Film Corp.*, 882 F.2d 656 (2d Cir. 1989), cert. denied, 493 U.S. 1021, 110 S. Ct. 722, 107 L. Ed. 2d 741 (1990), to support his position that the fine was punitive. The defendant's reliance on these cases is misplaced. In *Bagwell*, the United States Supreme Court determined that contempt fines totaling more than $52 million were criminal when, inter alia, the fines were "not coercive day fines, or even suspended fines, but [were] more closely analogous to fixed, determinate, retrospective criminal fines which [the] petitioners had no opportunity to purge once imposed." *International Union, United Mine Workers of America* v. *Bagwell*, supra, 837. Thus, the circumstances in *Bagwell* are patently distinguishable from those in the present case.

In *Twentieth Century Fox Film Corp.*, the United States Court of Appeals for the Second Circuit was "present[ed] [with] the constitutional question of whether a corporation is entitled to a jury trial in a prosecution for criminal contempt that results in a substantial fine, in this case, $500,000." *United States* v. *Twentieth Century Fox Film Corp.*, supra, 882 F.2d 657. The Second Circuit held "that the jury trial guarantee of the [s]ixth [a]mendment [to the federal constitution] is not entirely unavailable to corporate defendants charged with criminal contempt, that there is an absolute dollar amount of fines above which the [s]ixth [a]mendment entitles all corporations and other organizations to a jury trial for criminal contempts, regardless of the contemnor's financial resources, and that this amount is $100,000." Id.,

The other factors on which the defendant relies in asserting that the contempt sanction was criminal in nature do not affect our conclusion. First, although the plaintiff sought incarceration as a sanction for the defendant's continuous noncompliance with the court's orders, the court ultimately declined to incarcerate the defendant. In any event, as we recognized previously in this opinion, incarceration is a viable civil sanction. Id., 842. Second, the court's award of attorney's fees vis-à-vis its contempt finding on January 2, 2019, did not alter the nature of the contempt; indeed, § 52-256b (a) authorizes such fees in civil contempt proceedings. See footnote 4 of this opinion. Last, we discern no tangible connection between the disciplinary sanctions imposed on the defendant in the administrative disciplinary proceeding and the contempt in the present subpoena enforcement action.

In sum, we conclude that the contempt in the present case was civil, not criminal, in nature. Accordingly, we reject the defendant's claim.

III

The defendant's final claim is that the plaintiff lacks the statutory authority pursuant to § 19a-14 (a) (10) to continue seeking to enforce the subpoena because, as a result of the commission's decision in the administrative disciplinary proceeding revoking his dental license and assessing a $10,000 civil penalty against him, the investigation underlying the subpoena issued by the plaintiff has been concluded. We disagree.

Whether the plaintiff lacks statutory authority is a question of law subject to plenary review. See *Abrams* v. *PH Architects, LLC*, 183 Conn. App. 777, 788, 193 A.3d 1230 ("[i]t is axiomatic that matters of law are

663. *Twentieth Century Fox Film Corp.*, which plainly involved a criminal contempt, does not advance the defendant's contention that the contempt in the present case was criminal.

entitled to plenary review on appeal"), cert. denied, 330 Conn. 925, 194 A.3d 290 (2018). Moreover, insofar as we must construe statutes to resolve the defendant's claim, "[i]ssues of statutory interpretation constitute questions of law over which the court's review is plenary. The process of statutory interpretation involves the determination of the meaning of the statutory language as applied to the facts of the case, including the question of whether the language does so apply. . . . When construing a statute, [the court's] fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." (Internal quotation marks omitted.) *Keller* v. *Beckenstein*, 305 Conn. 523, 532, 46 A.3d 102 (2012).

Section 19a-14 (a) provides in relevant part: "The Department of Public Health shall have the following powers and duties with regard to the boards and commissions listed in subsection (b) of this section [including the commission] which are within the Department of Public Health. The department shall . . . (10) [c]onduct any necessary review, inspection or investigation regarding qualifications of applicants for licenses or certificates, possible violations of statutes or regulations, and disciplinary matters. In connection with any investigation, the Commissioner of Public Health or the commissioner's authorized agent may administer oaths,

issue subpoenas, compel testimony and order the production of books, records and documents. If any person refuses to appear, to testify or to produce any book, record or document when so ordered, a judge of the Superior Court may make such order as may be appropriate to aid in the enforcement of this section . . . .''

The defendant contends that the plaintiff is without statutory authority to continue prosecuting the present subpoena enforcement action in light of the language of § 19a-14 (a) (10) providing that the department is authorized to conduct ''any necessary . . . investigation'' and to issue subpoenas ''in connection with any investigation . . . .'' According to the defendant, the investigation that led to the issuance of the subpoena concluded on April 28, 2021, when the commission disciplined him in the administrative disciplinary proceeding. Therefore, the defendant posits, ''[t]here is nothing necessary about the department's continuing enforcement of the . . . subpoena, [n]or is the enforcement of the subpoena connected to [the department's] investigation because that investigation [has] concluded. . . . The department has . . . exercised its [full] authority allowed by statute and concluded the civil aspect of this matter.'' (Citations omitted.)

The defendant's claim is unavailing because, as the court determined in its October 12, 2021 decision, and as the plaintiff maintains in its appellate brief, the department's investigation remains ''pending'' notwithstanding the outcome of the administrative disciplinary proceeding. As we explained in rejecting the defendant's res judicata claim in part I of this opinion, the administrative disciplinary proceeding and the present subpoena enforcement action served wholly distinct purposes. The sanctions entered against the defendant in the administrative disciplinary proceeding for his failure to maintain patient records appropriately did not affect the department's investigation into his alleged

fraudulent billing practices, which, as evidenced by the court's contempt findings and enforcement orders, the defendant has thwarted continuously. Thus, the defendant's contention that the commission's decision effectively ended the investigation, thereby depriving the plaintiff of its statutory authority to continue pursuing enforcement of the subpoena, is without merit.

Moreover, insofar as the defendant raises the discrete argument that the revocation of his dental license necessarily terminated the investigation, that position is belied by the plain language of § 19a-14a, which provides: "Any person who is the subject of an investigation pursuant to subdivision (10) or (11) of subsection (a) of section 19a-14 or disciplinary action pursuant to section 19a-17, while holding a professional license issued by the Department of Public Health or having held such a license within eighteen months of the commencement of such investigation or disciplinary action shall be considered to hold a valid license for purposes of such investigation or disciplinary action." The department initiated its investigation into the defendant's alleged fraudulent billing practices in 2014, well before the commission revoked his dental license in 2021. Accordingly, under § 19a-14a, the defendant is "considered to hold a valid license for purposes of" the investigation that led to the issuance of the subpoena.

In sum, we conclude that the plaintiff has not been deprived of its statutory authority pursuant to § 19a-14 (a) (10) to continue seeking to enforce the subpoena issued in connection with its ongoing investigation into the defendant's purported fraudulent billing practices.

The judgment is affirmed.

In this opinion the other judges concurred.