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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 [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 peti-

tion 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 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 supple-

mental 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 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 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 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 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) 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 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 defen-

dant'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, includ-

ing 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]

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 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 appro-

priate 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]

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 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]

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.

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 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.

[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.

[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.

[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."

[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' " 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).

[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.

[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 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. . . ."

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

[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 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.

[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.

[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., 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.