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Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000783-MR

BERNARD C. MOSES, M.D.

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE MITCHELL PERRY, JUDGE
ACTION NO. 11-CI-001676

KENTUCKY BOARD OF
MEDICAL LICENSURE

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, J. LAMBERT, AND VANMETER, JUDGES.

LAMBERT, J., JUDGE: Bernard C. Moses, M.D., appeals from the Jefferson Circuit Court's opinion and order upholding the final order of revocation of his medical license by the Kentucky Board of Medical Licensure (the Board). After careful review of the parties' briefs and the record, we affirm the holding of the circuit court.

Dr. Moses is licensed to practice medicine in the state of Kentucky, and he has been practicing in Whitley County, Kentucky, for over thirty years. This case began in 1999, when Dr. Moses filed a grievance against another physician in his community, alleging that the physician was improperly prescribing medicine. After filing the grievance, Dr. Moses hired that physician. As a result of Dr. Moses filing the grievance, the Board began an investigation into Dr. Moses' own practice and methods of prescribing medicine in 2002.

The record reflects that during its investigation, the Board substantiated allegations that Dr. Moses was improperly prescribing controlled substances. On February 5, 2005, at Dr. Moses' request, an emergency hearing was conducted. After the hearing officer affirmed the emergency order, Dr. Moses sought and obtained partial relief in Jefferson Circuit Court, which allowed him to practice medicine but not to prescribe a certain medication, Lorcet Plus, pending resolution of the investigation.

In October 2006, the Board and Dr. Moses entered into an agreed order that required Dr. Moses to “maintain a controlled substances log, permit further Board consultant reviews of his medical practice, routinely request and utilize KASPER¹ reports on patients, complete a course on prescribing controlled substances, and comply with all provisions of the Medical Practices Act.”

¹ KASPER stands for Kentucky All Schedule Prescription Electronic Reporting and is a report that reflects any controlled substances an individual has been prescribed, the doctor who prescribed the medication, and the date and pharmacy at which the prescription was filled.

After entering into the above agreement, the Board began another investigation of Dr. Moses based upon a separate grievance that had been filed by Dr. Peter O. Lyn, M.D., and Glendese C. Miller, M.D., who were married to each other and had been working in Dr. Moses' medical practice. Dr. Lyn and Dr. Miller advised the Board that Dr. Moses had been over-prescribing controlled substances; did not perform drug tests on patients to determine drug abuse; and had threatened to and then fired them when they discussed their concerns with him.

Based upon the allegations Dr. Lyn and Dr. Miller made in their complaints, the Board obtained approximately twenty patient charts from Dr. Moses' practice and submitted them to a Board Consultant, Dr. Mark Jorrisch, for review. Based upon Dr. Jorrisch's review, the Board found deficiencies in Dr. Moses' practice related to diagnosis, treatment, and record keeping for patients. Further, the Board determined that Dr. Moses' methods of treating patients with chronic opioids or benzodiazepines were often not justified by records kept by Dr. Moses or were at least poorly justified.

After Dr. Jorrisch completed the review of the allegations Dr. Lyn and Dr. Miller had made, the Board asked Dr. Jorrisch to conduct a separate review of fifteen patient charts to determine whether Dr. Moses was complying with the terms of the October 3, 2006, agreed order. During this review, Dr. Jorrisch found that Dr. Moses' prescription log was not organized, that he failed to utilize KASPER reports that had been ordered on patients, that he failed to conduct pill counts, and that he failed to perform sufficient drug screenings.

On May 28, 2008, the Board issued a complaint against Dr. Moses, which was followed by an amended complaint on March 19, 2009. Therein, the Board alleged that Dr. Moses had violated the 2006 agreed order and that he had engaged in unethical, dishonorable, and unprofessional conduct in violation of Kentucky Revised Statutes (KRS) 311.595(9) and (13).

The Board conducted an administrative hearing, which began in February 2010. Dr. Moses attended the first day of the administrative hearing, but during Dr. Jorrisch's testimony on the second day, Dr. Moses became upset and left the hearing room. The hearing officer called a short break, but during the break, Dr. Moses approached the hearing officer and the attorney representing the Board. Dr. Moses cursed at them and then left the building. Upon his return to the hearing, the hearing officer described on the record the events that had just occurred. Dr. Moses did not return that day, and his counsel advised that he would continue to represent Dr. Moses, even though Dr. Moses was not physically present. Dr. Moses never returned for any of the remainder of the hearing.

Dr. Lyn and Dr. Miller both initially appeared at the hearing to testify. Dr. Miller testified first, but her testimony was not completed until the end of the first day. Because Dr. Lyn and Dr. Miller had already purchased plane tickets to return to their home in Florida that evening, Dr. Lyn's testimony was rescheduled, and he did not testify at the hearing. Ultimately, the Board did not call Dr. Lyn as a witness, and his allegations against Dr. Moses were not presented at the

administrative hearing and were not considered by the Board in its findings of fact, conclusions of law, and recommended order issued on October 11, 2010.

Dr. Miller testified about the allegations she had against Dr. Moses, and she also responded to allegations of sexual misconduct Dr. Moses had made about her husband, Dr. Lyn. Dr. Miller testified that she did not find the allegations to be credible with regard to her husband. Dr. Miller's testimony regarding her disagreements with Dr. Moses' prescription practices were consistent with Dr. Jorrisch's findings, and the hearing officer notes in his findings of fact, conclusions of law, and recommended order that he found Dr. Miller to be a credible witness. He found her opinions were supported by medical records that the Board had obtained during its review.

Dr. Moses testified at the emergency hearing, but he did not testify at the administrative hearing in this matter. Accordingly, he did not challenge the testimony given by Dr. Miller. The only testimony offered by Dr. Moses was his testimony given at the emergency hearing and the testimony elicited during cross-examination of the Board's witnesses. The hearing officer noted in his findings of fact, conclusions of law, and recommended order that many of the Board's allegations were not refuted by Dr. Moses or his counsel, despite several delays in the hearing. The hearing officer found that the allegations as discussed in the October 2006 agreed order, the complaint, and the amended complaint were substantiated by review of Dr. Moses' prescribing and records keeping practices, and he denied a motion to recuse himself as the hearing officer.

Specifically, the hearing officer noted in his recommended order that at the hearing, Dr. Jorrisch testified he found it troubling that Dr. Moses often prescribed the same medications to various patients and that he would normally expect to see a physician use a variety of medications for different patients and would expect to see changes in the prescriptions over time, as the patients' needs changed. Dr. Moses' patients, however, were all prescribed similar medications for extended periods of time and there were little changes in the amounts prescribed. The hearing officer found that his review of patient charts reflected that Dr. Moses engaged in practice that departed from or failed to conform to the standards of acceptable and prevailing medical practice in Kentucky. The hearing officer further found that Dr. Moses committed a series or pattern of acts during the course of his medical practice that under the circumstances amounted to incompetence, ignorance, negligence, and malpractice. The hearing officer noted that Dr. Jorrisch's testimony regarding the contents and review of the medical records was accurate. He also found that Dr. Jorrisch's opinions regarding Dr. Moses' practices were based upon the contents of those records, in addition to Dr. Jorrisch's own medical education, training, and experience. Thus, Dr. Jorrisch's conclusions were found to be credible by the hearing officer.

On February 4, 2011, the Board issued an order revoking Dr. Moses' license to practice medicine in Kentucky. On March 7, 2011, Dr. Moses filed a petition for judicial review in the Jefferson Circuit Court of the order revoking his medical license and also filed an action for declaratory judgment, arguing that KRS

13B.150(2)(c) was unconstitutional. In total, Dr. Moses sought declaratory judgment on nine procedural issues concerning the Board's ruling. On May 9, 2011, Dr. Moses filed a motion for partial summary judgment, asserting that the final order of revocation issued by the Board was "void *ab initio*," because the agency head had not been required to either review or consider the administrative record.

On September 9, 2011, the circuit court entered an interlocutory order dismissing the allegations of misconduct by the Board and hearing officer. The court later denied Dr. Moses' motion to reconsider/vacate the opinion and order of September 2011. At that time, the court set a briefing schedule on Dr. Moses' petition for judicial review. On November 8, 2011, Dr. Moses filed a motion to alter, amend, or vacate the circuit court's interlocutory order, asserting that the circuit court had used an erroneous standard of review. By order dated February 9, 2012, the circuit court again denied Dr. Moses' motion to reconsider or vacate.

In an order entered on January 31, 2014, the circuit court affirmed the Board's order of revocation. The court noted that Dr. Moses had made several claims in his petition for judicial review of the order revoking his medical license. First, Dr. Moses claimed his right to judicial review of the agency's decision. He also claimed that KRS 13B.150(2)(c) was unconstitutional, arguing that it amounted to a violation of the doctrine of separation of powers and required an unconstitutional burden of proof. Third, Dr. Moses claimed that he was entitled to declaratory relief on the nine procedural issues he had raised. Finally, Dr. Moses

claimed that the Board and the hearing officer had committed various acts of misconduct while investigating the allegations against him. The circuit court held that when reviewing the acts of an administrative agency, its primary concern was whether or not the agency's actions were arbitrary. The court concluded that the record of the hearing, as well as Dr. Jorrisch's testimony and written findings, amounted to substantial evidence of a probative value, and thus the Board's decision to revoke Dr. Moses' medical license was not arbitrary. The court also noted that the Board followed proper procedure and provided adequate due process of law, and it deemed any remaining allegations of error to be meritless or moot.

On February 10, 2014, Dr. Moses filed a motion to alter, amend, or vacate the circuit court's January 31, 2014, order. Dr. Moses requested that the court issue a "reasoned" opinion, and he argued that the court had not properly addressed his claim that the final order of revocation was "void *ab initio*." After oral argument on this motion, the circuit court denied Dr. Moses' request for relief in an order dated April 9, 2014. The court again found that there was substantial evidence to support the Board's order revoking Dr. Moses' medical license. The court stated that Dr. Moses' arguments that the actions of the Board were void *ab initio* because they violated other statutes were "completely without merit."

Dr. Moses now appeals the circuit court's orders denying him relief. Dr. Moses takes issue with the hearing panel's review of the administrative proceedings, the use of a qualified hearing officer, the sufficiency of the hearing

officer's recommended order, and the circuit court's standard of review. We will attempt to address each of Dr. Moses' arguments in turn.

Our standard of review of a circuit court's affirmance of an administrative decision is to determine whether the circuit court's findings upholding the Cabinet's decision are clearly erroneous. The circuit court's role as an appellate court is to review the administrative decision, not to reinterpret or to reconsider the merits of the claim, nor to substitute its judgment for that of the agency as to the weight of the evidence. Thus, the circuit court must determine both '[i]f the findings of fact are supported by substantial evidence of probative value' and 'whether or not the administrative agency has applied the correct rule of law to the facts so found.' 'The test of substantiality of evidence is whether ... it has sufficient probative value to induce conviction in the minds of reasonable [persons].'

500 Assocs., Inc. v. Nat. Res. & Envtl. Prot. Cabinet, 204 S.W.3d 121, 131 (Ky. App. 2006) (internal citations omitted). Regarding issues of law, this Court addresses those *de novo*. *Trading Post Mgmt. Co., LLC v. Kentucky Unemployment Ins. Comm'n*, 355 S.W.3d 451, 454 (Ky. App. 2011) (citing *Workforce Dev. Cabinet v. Gaines*, 276 S.W.3d 789, 792 (Ky. 2008)).

Initially, Dr. Moses argues that the Board did not consider the record and therefore its decision was without merit. Dr. Moses urges this Court to conclude that KRS 13B.120(1) requires the Board and its hearing panel to "consider" the administrative record. He argues that KRS 13B.120(1) requires the Board to review the hearing officer's recommendations and compare them to the administrative proceedings and hearings to ensure that the hearing officer's findings are consistent with the testimony of the witnesses and experts. Dr. Moses

argues that in the instant case, the Board did not compare the hearing officer's recommendations with the administrative hearing record.

In response, the Board contends that Kentucky law indicates that a hearing panel is required only to review the hearing officer's recommended order and any exceptions filed before issuing its final order.

KRS 13B.120 states, in pertinent part:

(1) In making the final order, the agency head shall consider the record including the recommended order and any exceptions duly filed to a recommended order.

(2) The agency head may accept the recommended order of the hearing officer and adopt it as the agency's final order, or it may reject or modify, in whole or in part, the recommended order, or it may remand the matter, in whole or in part, to the hearing officer for further proceedings as appropriate.

(3) The final order in an administrative hearing shall be in writing and stated in the record. If the final order differs from the recommended order, it shall include separate statements of findings of fact and conclusions of law. The final order shall also include the effective date of the order and a statement advising parties fully of available appeal rights.

Dr. Moses makes several arguments to this Court that somehow the Board did not follow the above statutory scheme when it evaluated his case. Dr. Moses argues that the plain meaning of the language used in KRS 13B.120(1) requires that the agency head "shall" consider the record. Dr. Moses contends that this means that the Board had to consider the entire record of the administrative hearing and compare it to the hearing officer's recommended order. We disagree. Had the

legislature intended for the Board to consider the entire record and compare it directly to each of the hearing officer's findings, it could have included the language "entire record" or "official record" in the statute, as the Board argues in its brief. Further, section (2) of the statute states that the Board can in fact adopt the hearing officer's recommended order in its entirety, and section (3) provides that if the Board deviates from the hearing officer's recommended order, it must include its own findings of fact and conclusions of law. Considering those provisions as a whole, the plain meaning of the statute indicates that the legislature intended for the Board to consider the record, including the hearing officer's recommended order; any testimony presented by witnesses or experts, as well as the exceptions filed by the parties and the original grievances which initiated the investigation; and make a determination as to whether substantial evidence supports revoking a physician's medical license.

In the instant case, Dr. Moses points to absolutely no evidence indicating that the Board did not consider the record when it reached the final decision to revoke his license. Dr. Moses has not articulated how any evidence in the record contradicts the hearing officer's findings or the evidence presented at the administrative hearing. Further, he does not argue that Dr. Jorrich's findings were refuted by any other conflicting evidence. Dr. Moses has not articulated to this Court how the Board issued a decision that was not supported by the evidence of record, the hearing officer's recommended order, or the witnesses who testified. A review of the administrative hearing in this case indicates that Dr. Moses left after

the first day, did not return, and did not refute much of the evidence against him.

We simply cannot say that the Board failed to consider the record when evaluating Dr. Moses' case. We find no violation of KRS 13B.120.

Dr. Moses next contends that the hearing officer was not qualified to hear the case and should have recused himself from the hearing. In support of this, Dr. Moses argues that the Board improperly delegated its authority to the hearing officer, who, he argues, has no medical training and should not be evaluating whether or not he should lose his license to practice medicine. In his arguments to the circuit court below, Dr. Moses contended that the hearing officer was biased against him, but he makes no such argument to this Court.

A review of KRS 13B.030(1) indicates that an agency is authorized to delegate its conferred powers to a hearing officer for purposes of conducting an administrative hearing. That statute states:

An agency head may exercise all powers conferred on an agency relating to the conduct of administrative hearings, and he may delegate conferred powers to a hearing officer or a member of a collegial body that serves as an agency head, or he may delegate conferred powers to a hearing officer to conduct an administrative hearing before a hearing panel, reserving the authority to render a recommended order to that panel. An agency head may not, however, delegate the power to issue a final order unless specifically authorized by statute, or unless disqualified in accordance with KRS 13B.040(2).

Further, KRS 13B.040(2)(b) indicates that an individual is qualified to serve as a hearing officer if he has not otherwise investigated or participated in the proceedings in his role as a hearing officer.

We find no merit in Dr. Moses' argument that the hearing officer in this case should have recused. The record does not reflect that the hearing officer participated in any of the proceedings or investigations prior to overseeing the administrative hearing. Further, Dr. Moses has not articulated how the hearing officer was biased against him, other than simply stating that he was biased against him in the proceedings before the circuit court. The record does not reflect that the hearing officer had any pecuniary interest in the outcome of the proceeding or that he had any personal bias toward any party involved. *See* KRS 13B.040(2)(b).

Further, despite Dr. Moses' arguments to the contrary, the statutory scheme does not require the hearing officer to have a medical background or medical training in order to qualify as a hearing officer under KRS Chapter 13B. A hearing officer must "possess and meet [the] qualifications as the Personnel Cabinet and the employing agency...may find necessary to assure competency in the conduct of an administrative hearing." KRS 13B.030(3). A hearing officer must "receive training necessary to prepare [him] to conduct a competent administrative hearing" and such training "shall pertain to the conduct of administrative hearings generally and to the applications of the provisions of [KRS Chapter 13B] specifically." KRS 13B.030(4). A review of the record does not indicate that the hearing officer in the instant case violated the statutory provisions or that he had any bias that would require him to recuse. Dr. Moses' arguments to the contrary are without merit. The record supports that the hearing officer conducted an extensive hearing and afforded Dr. Moses' counsel ample

opportunity to argue motions, challenge witnesses, and introduce evidence. Our review of the record does not establish that the hearing officer displayed a deep-seated favoritism or antagonism that prevented him from making a fair judgment. We find no error in the circuit court's holding that the hearing officer was not required to recuse from hearing Dr. Moses' case.

Dr. Moses next argues that the Board's order revoking his license was invalid because the hearing officer did not recommend a specific penalty to the Board, which he argues KRS 13B.110(1) requires the hearing officer to do. Dr. Moses contends that the statute requires the hearing officer to make recommendations to the agency head and that these recommendations would include a recommended disposition and penalty. The Board argues that Dr. Moses improperly relies on KRS 13B.110 alone while ignoring other parts of the statutory scheme. The Board contends that in its entirety, the statutory scheme is indicative that the legislature determined that the Board itself, and not the hearing officer, was in the best position to recommend any penalties following an administrative hearing.

We agree with the Board that considering the statutory scheme as a whole is the best method to determine the legislature's intent. *See Ledford v. Faulkner*, 661 S.W.2d 475, 476 (Ky. 1983). KRS 311.555 provides:

It is the declared policy of the General Assembly of Kentucky that the practice of medicine and osteopathy should be regulated and controlled as provided in KRS 311.530 to 311.620 in order to prevent empiricism and to protect the health and safety of the public. Further, the

General Assembly of Kentucky has created the board, as defined in KRS 311.530, to function as an independent board, the majority of whose members are licensed physicians, with the intent that such a peer group is best qualified to regulate, control and otherwise discipline the licensees who practice medicine and osteopathy within the Commonwealth of Kentucky. In furtherance of this intent, the judiciary of the Commonwealth of Kentucky, who may be caused to review the actions of the board, shall not interfere or enjoin the board's actions until all administrative remedies are exhausted, and modify, remand, or otherwise disturb those actions only in the event that the action of the board:

- (1) Constitutes a clear abuse of its discretion;
- (2) Is clearly beyond its legislative delegated authority;
or
- (3) Violated the procedure for disciplinary action as described in KRS 311.591.

Thus, it is clear that the legislature believed that a board comprised mostly of physicians and medical experts was in the best position to regulate other physicians. Further, KRS 311.591(7) states:

Upon completion of an administrative hearing, the hearing panel shall issue a final order that:

- (a) Dismisses the complaint upon a conclusion that the provisions of this chapter have not been violated;
- (b) Finds a violation of the provisions of this chapter, but does not impose discipline because the panel does not believe discipline to be necessary under the circumstances; or
- (c) Imposes discipline upon the licensee; in these instances, the panel may revoke, suspend, restrict, deny, or limit a license, or may reprimand a licensee or place a licensee on probation under terms the panel

may establish to protect the licensee, his patients, or the general public. The hearing panel may impose a fine whenever it finds that a violation of this chapter has occurred. If the board substantiates that sexual contact occurred between the physician and the patient while the patient was under the care of or in a professional relationship with the physician, the physician's license may be revoked or suspended with mandatory treatment of the physician as prescribed by the board. The board may require the physician to pay a specified amount for mental health services for the patient which are needed as a result of the sexual contact. The hearing panel's order shall be considered the final order of the board regarding the matter.

We agree with the Board that the statutory scheme clearly establishes the duties of the hearing officer and the duties of the hearing panel. The hearing officer is statutorily authorized to preside over the hearing and has been trained to conduct the hearing appropriately. The hearing panel (the Board), on the other hand, is made up of members of a peer group who have specialized knowledge and can best determine any sanctions following an investigation.

In this case, the hearing officer's recommended order stated:

Based upon the foregoing findings of fact and conclusions of law, the hearing officer recommends that the Kentucky Board of Medical Licensure finds Bernard C. Moses, M.D., guilty of the charges contained in the Amended Complaint and take any appropriate action against his license for those violations.

Given the statutory scheme, we find the hearing officer's recommended order to be sufficient, as it recommends that Dr. Moses be found guilty of the allegations made against him by other physicians. Furthermore, the statutory scheme, when viewed

in its entirety, evidences clearly the legislature's intent for the Board to determine the appropriate sanctions for Dr. Moses.

Dr. Moses also argues that he was denied due process of law when the circuit court did not conduct its review in conformity with KRS 13B.140-13B.150. In support of this, Dr. Moses contends that the Board did not file an answer in a format consistent with what is required in an "original action" under KRS 23A.010. Dr. Moses also alleges that the circuit court improperly denied his motions for declaratory judgment and partial summary judgment outside of ruling on the merits of the petition for judicial review, and that it did not evaluate/weigh the evidence in the record in his favor. The Board counters that the circuit court conducted its review in conformity with KRS 13B.140-13B.150.

Kentucky Rules of Civil Procedure (CR) 1(2) states, in part, "[t]hese [r]ules govern procedure and practice in all actions of a civil nature in the Court of Justice *except for special statutory proceedings, in which the procedural requirements of the statute shall prevail over any inconsistent procedures set forth in the Rules. ...*"

(Emphasis added). A special statutory proceeding is a proceeding that is complete within itself and has each procedural detail prescribed. *See Swift & Co. v. Campbell*, 360 S.W.2d 213, 214 (Ky. 1962). In the instant case, the above statutes articulate the procedural details for judicial review in a complete fashion.

Accordingly, the statutory appeal from a final order issued by the Board is a special statutory proceeding and is separate from civil actions governed by CR 1(2).

Moreover, it is well settled in this Commonwealth that appeals from final orders of administrative agencies, such as the Board, are not a matter of right, but instead are a matter of legislative grace.

There is no appeal to the courts from an action of an administrative agency as a matter of right. When grace to appeal is granted by statute, a strict compliance with its terms is required. Where the conditions for the exercise of power by a court are not met, the judicial power is not lawfully invoked. That is to say, that the court lacks jurisdiction or has no right to decide the controversy. *Kentucky Utilities Co. v. Farmers Rural Electric Cooperative Corporation*, Ky., 361 S.W.2d 300 (1962); *Roberts v. Watts*, Ky., 258 S.W.2d 513 (1953)....

Bd. of Adjustments v. Flood, 581 S.W.2d 1, 2 (Ky. 1978).

Relevant to this case, our review indicates that KRS 13B.140 describes how the petition is initiated and requires only that the Board respond by transmitting to the court the original or a certified copy of the official record of the proceeding under review; it does not require that the Board file an “Answer” admitting or denying numbered paragraphs of allegations as one would when answering a civil complaint. KRS 13B.150 describes that a court may hear oral argument and receive written briefs on the petition, but it does not require that the court conduct motion practice, such as motions for declaratory or summary judgment.

In the instant case, the record reflects that Dr. Moses initiated a KRS Chapter 13B petition for judicial review and simultaneously filed a motion for a declaratory judgment. The Board then transmitted a certified copy of the official record to the Court on April 7, 2011. On May 9, 2011, Dr. Moses filed a motion

for partial summary judgment. On September 12, 2011, the circuit court declined to entertain Dr. Moses' petitions for declaratory judgment and partial summary judgment separate from the petition, which it was permitted to do under KRS 13B.150. The court then denied Dr. Moses' motion to reconsider/vacate the opinion and order. The parties submitted briefs and responsive briefs, and after the court issued its opinion and order adjudicating Dr. Moses' various claims and affirming the Board's final order of revocation, Dr. Moses filed a motion to alter, amend, or vacate. At this point the circuit court heard oral arguments. A review of this timeline indicates that the Board participated at the circuit court level appropriately by certifying the record and filing responsive briefs and motions. Given the procedural history and the court's conformity with the statutes governing KRS Chapter 13B judicial review, we simply do not agree that Dr. Moses was denied due process or appropriate judicial review of his claims by the circuit court. This argument is without merit.

For his final argument, Dr. Moses claims that the Board's order of revocation was not supported by substantial evidence. Dr. Moses asserts that the circuit court "did not look at any other evidence which would fairly detract from the testimony of the Board's witnesses." However, as stated herein, the record reflects that although Dr. Moses had the opportunity to cross-examine the Board's witnesses over several days and to present evidence in his defense at the hearing, he instead walked out and never returned. Further, Dr. Moses chose not to testify and in fact instructed his attorney not to present a closing argument. Dr. Moses did

not present any experts or other witnesses who testified that his practices were in conformity with normal medical practices. The Board's claims regarding Dr. Moses' compliance with the terms of the agreed order were largely unchallenged. We do not perceive how the circuit court failed to consider any evidence that would contradict the Board's witnesses, simply because there was no such evidence to consider.

Furthermore, it is not the role of a reviewing court to reinterpret or to reconsider the merits of the claims, to determine the credibility of witnesses, or to substitute its judgment as to the weight of the evidence, but instead it is to determine whether the agency's actions were arbitrary or not supported by substantial evidence. *See 500 Assocs.*, 204 S.W.3d at 131-32.

In the instant case, the circuit court's order was supported by substantial evidence. The record reflects that Dr. Moses violated KRS 311.595(13) by ignoring the requirements of the agreed order and that he continued to use the same approach with regard to patients after entering into the agreed order. Further, the record reflects that Dr. Moses practiced with a primary goal of prescribing controlled substances to patients rather than with the primary goal of providing proper healthcare to the public. In addition, the evidence of record indicates that Dr. Moses did not support his prescribing practices with proper documentation and record keeping and failed to diagnose other medical conditions unrelated to the prescribing of controlled substances. The record goes on to reflect that Dr. Moses continued to prescribe controlled substances and directed the other physicians in

his practice to continue prescribing large quantities of controlled substances, even after those physicians began to question his prescribing practices. The evidence also indicates that Dr. Moses did not properly utilize KASPER reports in prescribing pain medications and that he ignored clear signs of noncompliance and inappropriate drug screens. Board consultant testimony also supported the Board's findings. Substantial evidence supported the Board's order of revocation, and the circuit court had ample evidence before it to affirm the Board's order.

Because we find no error, we affirm the Jefferson Circuit Court's September 12, 2011, order upholding the revocation of Dr. Moses' medical license.

ALL CONCUR.

BRIEF FOR APPELLANT:

J. Fox DeMoisey
Louisville, Kentucky

BRIEF FOR APPELLEE:

Leanne K. Diakov
Louisville, Kentucky