

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-000695-MR

CHRISTOPHER C. BABCOCK, D.M.D., M.D.

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE AUDRA J. ECKERLE, JUDGE
ACTION NO. 16-CI-002469

KENTUCKY BOARD OF MEDICAL LICENSURE

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: JOHNSON,¹ SMALLWOOD AND THOMPSON, JUDGES.

SMALLWOOD, JUDGE: Christopher Babcock, D.M.D., M.D., appeals from an order of the Jefferson Circuit Court which affirmed an order of the Kentucky Board of Medical Licensure (hereinafter referred to as Board). The Board's order

¹ Judge Robert G. Johnson concurred in this opinion prior to the expiration of his term of office. Release of the opinion was delayed by administrative handling.

indefinitely restricted Babcock's license to practice medicine. In essence, the Board prohibited Dr. Babcock from practicing medicine in Kentucky. On appeal, Dr. Babcock argues that the Board's order was void because the Board and its hearing officer failed to follow all the statutorily prescribed mandates. Dr. Babcock also argues that the Board lacked subject matter jurisdiction to discipline him because his medical license had lapsed and was inactive. The Board argues that it followed all the relevant statutory rules and that it did not lack subject matter jurisdiction. We find that the trial court correctly found that the Board's order was proper; therefore, we affirm.

Dr. Babcock is a licensed dentist with training in oral and maxillofacial surgery. He also obtained his medical degree and became a licensed medical doctor in 2003. In November of 2014, a member of Dr. Babcock's dental group filed a grievance with the Board alleging that Dr. Babcock was abusing prescription drugs. On December 17, 2014, Dr. Babcock entered into an agreed order with the Board prohibiting him from practicing medicine. In April of 2015, Dr. Babcock's medical license became inactive after he declined to renew it.

On August 6, 2015, an inquiry panel of the Board filed a complaint alleging that Dr. Babcock had become addicted to a controlled substance and that his continued practice of medicine posed a risk to the public. That same day, the Board entered an emergency order prohibiting Dr. Babcock from practicing

medicine until the issues in the complaint were resolved. Dr. Babcock subsequently filed an answer to the complaint in which he alleged that the Board did not have subject matter jurisdiction to discipline him because his license was inactive when the complaint was entered. He also claimed that the Board contravened its statutory authority and failed to provide due process because its hearing officers routinely refuse to recommend specific penalties and because the Board did not review the entire record before issuing a final order.

On September 28, 2015, a hearing was held on the Board's emergency order. On October 5, 2015, the hearing officer entered a recommended order affirming the Board's emergency order. The emergency order was subsequently reversed by the Jefferson Circuit Court on appeal.

On February 9, 2016, a hearing was held on the complaint. Dr. Babcock did not appear at the hearing; however, his attorney was present and explained that Dr. Babcock refused to appear because he believed the Board did not have jurisdiction over him. Dr. Babcock's attorney entered one piece of evidence on his client's behalf, a document titled "Notice of Retirement." The hearing officer found Dr. Babcock in default and held that the allegations in the complaint were true. The hearing officer then entered a recommended order adopting the pertinent allegation in the complaint. The hearing officer also found that the Board had jurisdiction over Dr. Babcock despite his inactive license. The

officer recommended that the Board “take any appropriate action against the license of Dr. Babcock to practice medicine[.]” A more specific penalty was not provided.

On April 6, 2016, Dr. Babcock filed his exceptions to the recommended order. He did not attack the hearing officer’s findings of fact or the entry of default judgment. He only again raised the issue of subject matter jurisdiction. On April 26, 2016, the Board entered an order of indefinite restriction and prohibited Dr. Babcock from practicing medicine in Kentucky. The order stated that the Board reviewed the complaint, the hearing officer’s recommended order, Dr. Babcock’s exceptions, and a memorandum from the Board’s counsel.

Dr. Babcock timely filed a petition for judicial review with the Jefferson Circuit Court. He argued that the Board’s order should be vacated on two separate grounds: first, that the Board lacked subject matter jurisdiction to discipline him due to his inactive medical license, and second, that the hearing officer’s failure to recommend a specific penalty and the Board’s refusal to consider the entire record amounted to misconduct that rendered the administrative proceeding void *ab initio*.

The trial court held that the Board had jurisdiction over Dr. Babcock because Kentucky Revised Statute (KRS) 311.595 gives the Board authority to limit or restrict a “license” and the statute does not make a distinction between

active and inactive licenses. The court also held that the hearing officer did not need to recommend a specific penalty and that the Board does not need to review the entire record, but may rely on the hearing officer's findings of fact if it so chooses. This appeal followed.

On appeal, Dr. Babcock raises the same arguments as he did at the trial level: that the hearing officer is required to recommend a specific penalty, that the Board must review the entire record, and that the Board did not have subject matter jurisdiction. We will dispose of the first two issues first as a recent decision of the Kentucky Supreme Court deals precisely with them.

In *Kentucky Bd. of Med. Licensure v. Strauss*, 558 S.W.3d 443 (Ky. 2018), Dr. Jon Strauss raised the same issues regarding the hearing officer's recommended penalty and the Board's review of the entire record. Dr. Strauss, like Dr. Babcock, argued that KRS 13B.110(1) required the hearing officer to recommend a specific penalty. KRS 13B.110(1) states:

Except when a shorter time period is provided by law, the hearing officer shall complete and submit to the agency head, no later than sixty (60) days after receiving a copy of the official record of the proceeding, a written recommended order which shall include his findings of fact, conclusion of law, and recommended disposition of the hearing, including recommended penalties, if any. The recommended order shall also include a statement advising parties fully of their exception and appeal rights.

(Emphasis added).

The Court held that the “if any” language emphasized above indicated that the hearing officer did not need to recommend a specific penalty. *Strauss* at 452.

As to the Board’s review of the entire record, that argument stemmed from KRS 13B.120(1) which states that “[i]n making the final order, the agency head shall consider the record including the recommended order and any exceptions duly filed to a recommended order.” Dr. Strauss, again like Dr. Babcock, argued that this statute required the Board to independently review the entire record before it issued its final order. The Court held the following:

In sum, the Board is charged with considering the record including the recommended order and exceptions. The extent of the record consideration beyond the recommended order and exceptions is a matter committed to the Board’s sound discretion. Contrary to Strauss’s claim, KRS 13B.120 does not mandate an independent review of the entire record.

Strauss at 457.

Based on the holding of the Court in *Strauss*, we find that the arguments raised regarding the hearing officer’s recommended penalty and the Board’s review of the record are without merit.

As to Dr. Babcock’s other argument on appeal, that the Board lacked subject matter jurisdiction, we agree with the trial court. KRS 311.595 states in relevant part that the Board

may deny an application or reregistration for a license;
place a licensee on probation for a period not to exceed

five (5) years; suspend a license for a period not to exceed five (5) years; limit or restrict a license for an indefinite period; or revoke any license heretofore or hereafter issued by the board[.]

Here, the statute allows the Board to take action against any license. It does not require the license to be active at the time. “We must interpret statutes as written, without adding any language to the statute[.]” *Commonwealth v. Chestnut*, 250 S.W.3d 655, 661 (Ky. 2008) (footnote omitted).

When Dr. Babcock chose not to renew his license, the license did not cease to exist, it merely became inactive. The Board could therefore still act upon it. Furthermore, we find as relevant the fact that Dr. Babcock’s license was active at all times relevant to the actions described in the complaint. It would be unreasonable for a doctor to commit prohibited acts that could lead to a suspended or revoked medical license and then escape discipline by the Board by failing to renew his or her license. It is clear to this Court that the Board retained subject matter jurisdiction even though Dr. Babcock’s license was inactive.

For the foregoing reasons, we affirm the judgment of the Jefferson Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

J. Fox DeMoisey
Louisville, Kentucky

BRIEF FOR APPELLEE:

Sara Farmer
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