

STATE OF MICHIGAN
COURT OF APPEALS

DEPARTMENT OF COMMUNITY HEALTH,
BUREAU OF HEALTH PROFESSIONS,

Petitioner-Appellee,

v

LIBERTY DISCOUNT DRUGS, INC.,

Respondent-Appellant.

UNPUBLISHED

June 24, 2010

No. 290170

Board of Pharmacy

Disciplinary Subcommittee

LC No. 2007-001432

DEPARTMENT OF COMMUNITY HEALTH,
BUREAU OF HEALTH PROFESSIONS,

Petitioner-Appellee,

v

GEORGE HANNA ESHO,

Respondent-Appellant.

No. 290173

Board of Pharmacy

Disciplinary Subcommittee

LC No. 2007-001434

Before: FORT HOOD, P.J., and BORRELLO and STEPHENS, JJ.

PER CURIAM.

In these consolidated appeals, respondents Liberty Discount Drugs, Inc. (“Liberty Discount”), and George Hanna Esho appeal as of right from final orders entered by the Department of Community Health, Bureau of Health Professions Board of Pharmacy Disciplinary Subcommittee. The subcommittee accepted the findings of fact and conclusions of law of an administrative law judge (ALJ) and placed respondent Esho on probation for one year and ordered him to pay a fine of \$2,500, and ordered respondent Liberty Discount to pay a fine of \$1,000. We affirm. These appeals have been decided without oral argument pursuant to MCR 7.214(E).

Respondents argue that the final orders are deficient because they do not address the mitigating factors identified in the ALJ’s proposals for decision. We disagree.

Respondents' argument is premised on their contention that the final orders do not satisfy the requirements of 1999 AC, R 338.1630(5). This Court reviews de novo the interpretation and application of an unambiguous administrative rule. *City of Romulus v Dep't of Environmental Quality*, 260 Mich App 54, 64; 678 NW2d 444 (2003).

Rule 338.1630(5) states:

A disciplinary subcommittee, board, or task force, in its final order, may adopt, modify, or reject, in whole or in part, the opinion or proposal for decision of the administrative law judge. If the disciplinary subcommittee, board, or task force modifies or rejects the opinion or proposal for decision, the reasons for that action shall be stated in the final order.

In the proposals for decision, the ALJ made findings of fact and conclusions of law. In a heading labeled, "PROPOSED DECISION," the proposals for decision state:

The undersigned Administrative Law Judge recommends that the Board adopts [sic] the findings of fact and conclusions of law as set forth in this Proposal for Decision. Further, it is proposed that the Board consider the mitigating evidence presented, as set forth in the findings of fact above, before imposing any disciplinary action.

The final orders issued by the subcommittee state, in pertinent part:

The Disciplinary Subcommittee, having reviewed the administrative record, considered the within matter at a regularly scheduled meeting held in Lansing, Michigan, on December 15, 2008, and accepted the administrative law judge's findings of fact and conclusions of law contained in the Proposal for Decision. Now therefore

The final orders do not mention the mitigating factors.

Respondents' argument that the final orders are deficient is not persuasive. The ALJ proposed that the subcommittee "consider the mitigating evidence" There is no basis for concluding that the subcommittee did not "consider the mitigating evidence." The final orders state that the subcommittee made its decision after "having reviewed the administrative record" The mitigating factors were part of the administrative record through the testimony of respondent Esho and an exhibit that summarized the mitigating factors. Additionally, the administrative law judge noted that the mitigating evidence was a part of the adopted proposed findings of fact and conclusions of law. The fact that the subcommittee was not persuaded to impose a lesser penalty does not mean that the subcommittee did not consider the factors. *Marrs v Bd of Medicine*, 422 Mich 688, 694; 375 NW2d 321 (1985). Because the subcommittee did not modify or reject the proposal for decision, Rule 338.1630(5) did not require a statement of reasons for rejection or modification and did not require the subcommittee to mention the factors and the role that they played in determining an appropriate sanction.

Affirmed.

/s/ Karen M. Fort Hood

/s/ Stephen L. Borrello

/s/ Cynthia Diane Stephens