

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State ex rel. Welden, :
 :
 Petitioner-Appellant, :
 :
 v. : No. 11AP-139
 : (C.P.C. No. 10CVH-10-15092)
 Ohio State Medical Board, :
 : (ACCELERATED CALENDAR)
 Respondent-Appellee. :

D E C I S I O N

Rendered on December 20, 2011

Scott R. Welden, pro se.

Michael DeWine, Attorney General, and *Katherine J. Brockbrader*, for appellee.

APPEAL from the Franklin County Court of Common Pleas

CONNOR, J.

{¶1} Petitioner-appellant, Scott R. Welden ("appellant"), appeals pro se the judgment rendered by the Franklin County Court of Common Pleas in favor of respondent-appellee, Ohio State Medical Board ("Medical Board"). For the reasons that follow, we affirm in part and reverse in part.

{¶2} On October 14, 2010, appellant filed a petition for a writ of mandamus in the trial court. The factual basis of his petition apparently regards the Medical Board's obligations under Ohio's Public Records Act. In response to appellant's petition, the Medical Board filed a motion to dismiss based upon Civ.R. 12(B)(1) and 12(B)(6). Appellant submitted no response to this motion. Instead, without requesting leave of

court, appellant filed an amended petition for a writ of mandamus. The Medical Board filed a motion to dismiss appellant's amended petition, which again was met with no response from appellant. On February 9, 2011, the trial court granted the Medical Board's motions. This timely appeal ensued and presents the following assignment of error:

The lower court erred when it granted a Rule 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted when the facts in the complaint allege all of the elements necessary for a writ of mandamus.

{¶3} Appellate review of Civ.R. 12(B)(6) dismissals is de novo. *Ohio Bur. of Workers' Comp. v. McKinley*, 130 Ohio St.3d 156, 2011-Ohio-4432, ¶12, citing *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, ¶5. Thus, no deference is afforded to such dismissals. *Holmes v. Crawford Machine, Inc.*, 3d Dist. No. 3-11-09, 2011-Ohio-5741, ¶42, citing *Castlebrook, Ltd. v. Dayton Properties Ltd. Partnership* (1992), 78 Ohio App.3d 340, 346. Under Civ.R. 12(B)(6), a court can dismiss a mandamus action if, after the factual allegations of the complaint are presumed true and all reasonable inferences are made in relator's favor, it appears beyond doubt that relator can prove no set of facts entitling him to the requested relief. *State ex rel. Talwar v. State Med. Bd. of Ohio*, 104 Ohio St.3d 290, 2004-Ohio-6410, ¶5, citing *State ex rel. Ferguson v. Court of Claims of Ohio, Victims of Crime Div.*, 98 Ohio St.3d 399, 2003-Ohio-1631, ¶9.

{¶4} In order to successfully prosecute a petition for a writ of mandamus, relator must establish a clear legal right to the records requested, a corresponding clear legal duty on the part of the respondent to provide the records, and the lack of an adequate remedy in the ordinary course of law. See *Ferguson* at ¶10, citing *State ex rel. N. Olmsted v. Cuyahoga Cty. Bd. of Elections*, 93 Ohio St.3d 529, 532, 2001-Ohio-1626.

{¶5} In a broad sense, the facts of this matter are straightforward. Appellant directed a series of public records requests to the Medical Board. The Medical Board provided records in response, but appellant was unsatisfied and filed the instant mandamus action to compel compliance. Nevertheless, the nature and extent of the claims asserted in this matter are anything but a model of clarity. The Medical Board and the trial court undertook the difficult task of attempting to decipher the potential claims presented and relief sought in appellant's amended petition.

{¶6} In this appeal, appellant presents four scant arguments that are confined to half of one page. His brief offers not a single citation to the Public Records Act. Instead, appellant merely states that appellee failed to comply with its duties in four distinct ways.

{¶7} First, he argues that the Medical Board had a duty to provide "a description of the complaints pursuant to statute," and it failed to comply with this duty. Presumably, appellant is referring to R.C. 4731.22(F)(6), which is referenced in the record before us.

That statute provides:

On a quarterly basis, the board shall prepare a report that documents the disposition of all cases during the preceding three months. The report shall contain the following information for each case with which the board has completed its activities:

- (a) The case number assigned to the complaint or alleged violation;
- (b) The type of certificate to practice, if any, held by the individual against whom the complaint is directed;
- (c) A description of the allegations contained in the complaint;
- (d) The disposition of the case.

The report shall state how many cases are still pending and shall be prepared in a manner that protects the identity of

each person involved in each case. The report shall be a public record under section 149.43 of the Revised Code.

{¶8} In his amended petition, appellant acknowledged receiving a copy of this report but argued that the descriptions of the allegations lacked sufficient detail. As is clear, however, R.C. 4731.22(F)(6)(c) does not specify the amount of detail required in the description. Appellant simply has no clear legal right to demand a particular amount of specificity to his satisfaction. Similarly, the Medical Board had no clear legal duty to supplement the report with additional detail. The trial court did not err in reaching these same conclusions. We accordingly reject appellant's first challenge to the dismissal of his mandamus action.

{¶9} Second, appellant contends that he was not provided with the addresses of each and every licensed physician in Ohio, in spite of his request for such information. However, there is "no duty under R.C. 149.43 to create new records by searching for and compiling information from existing records." *State ex rel. White v. Goldsberry*, 85 Ohio St.3d 153, 154, 1999-Ohio-447, citing *State ex rel. Kerner v. State Teachers Retirement Bd.*, 82 Ohio St.3d 273, 274, 1998-Ohio-242, and *State ex rel. Lanham v. Ohio Adult Parole Auth.*, 80 Ohio St.3d 425, 427, 1997-Ohio-104; see also *State ex rel. Morgan v. New Lexington*, 112 Ohio St.3d 33, 2006-Ohio-6365. Because the record appellant sought did not exist, there was no clear duty to create such a record. See *White* at 154. As a result, we again find no error in the trial court's decision, which reached this same conclusion. We reject appellant's second challenge to the dismissal of his mandamus action. *Id.* (affirming the dismissal of a mandamus action where the public record did not exist).

{¶10} Appellant's third challenge regards redactions in a document provided by the Medical Board. Specifically, appellant submitted a public records request for complaints lodged against Michael Staples, an investigator employed by the Medical Board. Appellant received a heavily redacted, indecipherable document in response to his request. As a result, appellant argues that the trial court erred by merely dismissing his claim under Civ.R. 12(B)(6) without even looking at the document in question. In response, the Medical Board argues that the redacted information is confidential and therefore not subject to disclosure.

{¶11} " '[W]hen a governmental body asserts that public records are excepted from disclosure and such assertion is challenged, the court must make an individualized scrutiny of the records in question. If the court finds that these records contain excepted information, this information must be redacted and any remaining information must be released.' " *State ex rel. Besser v. Ohio State Univ.*, 87 Ohio St.3d 535, 541, 2000-Ohio-475, quoting *State ex rel. Master v. Cleveland*, 75 Ohio St.3d 23, 31, 1996-Ohio-228, quoting *State ex rel. Natl. Broadcasting Co., Inc. v. Cleveland* (1988), 38 Ohio St.3d 79, paragraph four of the syllabus.

{¶12} In his amended petition, appellant clearly challenged the extent of the redactions provided by the Medical Board. Because the trial court dismissed this matter under Civ.R. 12(B)(6), we must remand this matter for further consideration of this issue. See *Natl. Broadcasting* at 81 (holding that the court must compare the content of the records against the statutory exceptions to disclosure).

{¶13} Finally, appellant's fourth challenge regards the Medical Board's refusal to provide certain documents. Specifically, appellant submitted a public records request for

the "physician letters" directed to the Medical Board describing appellant's fitness to practice medicine in Ohio. He argues that these letters will be used to support his attempt to reinstate his medical license. This argument, however, is belied by statutory law and controlling case law.

{¶14} "Information received by the [Medical] [B]oard pursuant to an investigation is confidential[.]" R.C. 4731.22(F)(5). Consequently, the Medical Board's investigative records are specifically exempted from disclosure under R.C. 149.43. *State ex rel. Wallace v. State Med. Bd. of Ohio*, 89 Ohio St.3d 431, 434, 2000-Ohio-213. Thus, "the Medical Board's investigative records are not public records within the meaning of R.C. 149.43[.]" *Id.*

{¶15} As is clear, the physician letters that appellant seeks are not public records. Regardless of appellant's intended use, they are a part of the Medical Board's investigative records pertaining to appellant's fitness to practice medicine. They are not subject to disclosure. The trial court did not err in reaching this same conclusion. We reject appellant's fourth challenge to the trial court's judgment in this regard.

{¶16} Based upon the foregoing, we sustain in part and overrule in part appellant's sole assignment of error. We accordingly remand this matter for further proceedings consistent with this decision and in accordance with law.

*Judgment affirmed in part and reversed in part;
cause remanded for further proceedings.*

KLATT and DORRIAN, JJ., concur.
