

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Manouchehr Yaghmaee, D.C.,	:	
Plaintiff-Appellant,	:	
v.	:	No. 04AP-302
Ohio State Chiropractic Board,	:	(C.P.C. No. 03CV-10437)
Defendant-Appellee.	:	(ACCELERATED CALENDAR)

O P I N I O N

Rendered on November 30, 2004

Porter, Wright, Morris & Arthur, and Eric J. Plinke, for appellant.

Jim Petro, Attorney General, and Michelle Stassi Rosamond, for appellee.

APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶1} Appellant, Manouchehr Yaghmaee, appeals the judgment of the Franklin County Court of Common Pleas, which affirmed the order of appellee, Ohio State Chiropractic Board ("the board"), permanently revoking appellant's chiropractic license.

{¶2} The following facts are undisputed. On December 11, 2001, appellant was indicted in the Court of Common Pleas, Hamilton County, Ohio, on 22 felony counts of insurance and/or workers' compensation fraud. Appellant later pled guilty to two counts

of insurance fraud and two counts of workers' compensation fraud, pursuant to a plea agreement. As part of the plea agreement, the state reduced the four counts to which appellant pled guilty to misdemeanor offenses of the first degree, and dismissed the remaining felony counts.

{¶3} On February 3, 2003, the board issued to appellant a "Notice of Opportunity For Hearing" letter ("notice letter"), notifying him that it would consider whether to take disciplinary action against him for an alleged violation of R.C. 4734.31(C)(5). Specifically, the notice letter described the alleged violation as follows:

On or about December 2, 2002, in the Court of Common Pleas, Hamilton County, Ohio, Criminal Division, you pled guilty to two counts of Insurance Fraud, misdemeanors of the first degree in violation of Ohio Revised Code § 2913.47 (B)(1) and two counts of Worker's [sic] Compensation Fraud, misdemeanors of the first degree in violation of Ohio Revised Code § 2913.48. The acts underlying these convictions are specifically outlined in your Indictment and Plea Agreement in Case Number B 01-08878.

{¶4} Appellant timely requested a hearing, which was held on August 21, 2003. At the hearing, the state presented the testimony of appellant and that of board investigator T.J. Hollis ("Hollis"). Among other exhibits, the state introduced certified copies of the indictment, guilty plea, sentencing entry and sentencing hearing transcript from the case file in the Hamilton County criminal case. On September 12, 2003, the board issued and mailed an order finding, inter alia, that appellant had pled guilty to two misdemeanor counts each of insurance and workers' compensation fraud. The board concluded that appellant, "with purpose to defraud or knowing that he was facilitating fraud, secured payment for services not rendered in the course of his chiropractic practice" and that he "is not entitled to a position of public trust." Accordingly, pursuant to

the authority vested in the board by R.C. 4734.31, the board permanently revoked appellant's license.

{¶5} Pursuant to R.C. Chapter 119, appellant timely appealed to the court of common pleas, which affirmed the board's order. Thereafter, appellant timely appealed to this court, and asserts the following assignment of error for our review:

THE TRIAL COURT ABUSED ITS DISCRETION IN AFFIRMING THE ORDER OF THE BOARD WHERE THE BOARD VIOLATED R.C. § 119.07 AND DEPRIVED DR. YAGHMAEE OF DUE PROCESS BY FAILING TO GIVE PROPER NOTICE OF NEW ALLEGATION MADE FOR THE FIRST TIME AT HEARING.

{¶6} R.C. 119.12 governs this appeal and provides, in part:

The court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and such additional evidence as the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of such a finding, it may reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law.

{¶7} Under R.C. 119.12, when the trial court reviews an order of an administrative agency, the trial court must consider the entire record to determine whether the agency's order is supported by reliable, probative and substantial evidence and is in accordance with law. *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St.2d 108, 110-111, 17 O.O.3d 65, 407 N.E.2d 1265. See, also, *Andrews v. Bd. of Liquor Control* (1955), 164 Ohio St. 275, 280, 58 O.O. 51, 131 N.E.2d 390.

{¶8} The trial court's "review of the administrative record is neither a trial *de novo* nor an appeal on questions of law only, but a hybrid review in which the court 'must appraise all the evidence as to the credibility of the witnesses, the probative character of

the evidence and the weight thereof.' " *Lies v. Veterinary Med. Bd.* (1981), 2 Ohio App.3d 204, 207, 2 OBR 223, 441 N.E.2d 584, quoting *Andrews*, supra, at 280. In its review, the trial court must give due deference to the administrative agency's resolution of evidentiary conflicts, but the findings of the agency are not conclusive. *Univ. of Cincinnati*, supra, at 111.

{¶9} An appellate court's review of an administrative decision is more limited than that of a trial court. *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621, 614 N.E.2d 748, rehearing denied, 67 Ohio St.3d 1439, 617 N.E.2d 688. In *Pons*, the Supreme Court of Ohio noted, "* * * [w]hile it is incumbent on the trial court to examine the evidence, this is not a function of the appellate court. The appellate court is to determine only if the trial court has abused its discretion[.] * * * Absent an abuse of discretion on the part of the trial court, a court of appeals may not substitute its judgment for [that of an administrative agency] or a trial court. Instead, the appellate court must affirm the trial court's judgment." *Ibid.* An abuse of discretion implies the decision is both without a reasonable basis and is clearly wrong. *Angelkovski v. Buckeye Potato Chips Co.* (1983), 11 Ohio App.3d 159, 161-162, 11 OBR 242, 463 N.E.2d 1280. On questions of law, however, the court of common pleas does not exercise its discretion and the court of appeals' review is plenary. *Univ. Hosp., Univ. of Cincinnati College of Medicine v. State Emp. Relations Bd.* (1992), 63 Ohio St.3d 339, 587 N.E.2d 835.

{¶10} Appellant does not challenge the board's order as being unsupported by reliable, probative and substantial evidence. Rather, appellant argues that the order is unlawful because, according to appellant, it was based upon allegations and conduct of

which he was not properly given notice pursuant to R.C. 119.07. That section provides, in pertinent part:

Except when a statute prescribes a notice and the persons to whom it shall be given, in all cases in which section 119.06 of the Revised Code requires an agency to afford an opportunity for a hearing prior to the issuance of an order, the agency shall give notice to the party informing him of his right to a hearing. Notice shall be given by registered mail, return receipt requested, and *shall include the charges or other reasons for the proposed action*, the law or rule directly involved, and a statement informing the party that he is entitled to a hearing if he requests it within thirty days of the time of mailing the notice.

* * *

The failure of an agency to give the notices for any hearing required by sections 119.01 to 119.13 of the Revised Code in the manner provided in this section shall invalidate any order entered pursuant to the hearing.

(Emphasis added.)

{¶11} Appellant contends that he was not given adequate notice of the allegations with which he would be faced at the hearing. This contention is based upon the board having presented its case against appellant at the hearing as one involving a "19 month pattern of corrupt billing practice."

{¶12} In its opening statement, the state characterized the evidence as proof that appellant engaged in the foregoing extensive fraudulent scheme. During its presentation of its case, the state offered the testimony of investigator Hollis, who related the substance and result of a joint investigation of appellant undertaken with the Cincinnati Police Department, the Ohio Department of Insurance and the Ohio Bureau of Workers' Compensation. According to Hollis, the investigation was begun after all three of the

foregoing entities, in addition to the board, received patient and insurer complaints about appellant over a time period spanning 12 to 18 months. Investigator Hollis did not augment his testimony with documentary or other direct evidence of the alleged 19-month fraud scheme; the sole evidence thereof was presented in the form of Hollis' testimony.

{¶13} Appellant argues that the board's notice letter did not provide him with the requisite notice of the "charges or other reason for the proposed action," pursuant to R.C. 119.07, because it did not specifically include the allegation that appellant had engaged in a "19 month pattern of corrupt billing practice." Appellant claims, therefore, that he had no notice that such a charge would be made and evidence thereof would be presented at the hearing, and no opportunity to prepare a defense thereto. He contends that the board subjected him to a "trial by surprise" and was "trying to make the case that there was more to this case than the four misdemeanors."¹

{¶14} The board argues that appellant cannot legitimately claim that it failed to provide proper notice of any of the charges presented at the hearing. The time period covered by the evidence submitted at the hearing was the same time period covered by appellant's indictment, which was incorporated by reference into the notice letter. The board also points out that appellant stipulated to the admission into the record of the indictment and the guilty plea form. Appellant testified that he had received a copy of the indictment prior to his guilty plea, and personally signed the plea agreement, indicating he understood the facts serving as the basis for the charges.

{¶15} Finally, the board argues, even if some of Hollis' testimony about the scope of his investigation went beyond what was relevant to the misdemeanor convictions, the

¹ Brief of Appellant, 7.

same was not prejudicial because the board relied solely on the fact of appellant's misdemeanor convictions – not on Hollis' testimony – in ordering revocation of appellant's chiropractic license.

{¶16} This appeal presents the question whether the board's presentation of evidence that appellant engaged in a lengthy insurance and workers' compensation fraud scheme, the investigation of which culminated in appellant being indicted on 22 felony fraud counts, violates R.C. 119.07 and the requirements of procedural due process when the notice letter specified that the proposed disciplinary action involves R.C. 4734.31(C)(5) and the acts underlying the proposed action are specified in the felony indictment and the plea agreement. We hold that R.C. 119.07 and appellant's due process rights were not violated.

{¶17} The board may revoke a chiropractic license for a licensee's, "plea of guilty to * * * a misdemeanor committed in the course of practice, in which case a certified copy of the court record shall be conclusive evidence of the matter." R.C. 4734.31(C)(5). As the board noted, appellant's misdemeanor convictions for insurance and workers' compensation fraud were specifically delineated in the notice letter as being the basis for the action. Appellant stipulated to the admission into evidence of certified copies of his indictment and guilty plea in the Hamilton County criminal fraud case. By the plain language of R.C. 4734.31(C)(5), the certified copies of the court record provide conclusive evidence of appellant's misdemeanor convictions for fraud committed in the course of practice. Thus, appellant could not have prepared or raised any defense to the allegation that he had, in fact, been so convicted.

{¶18} The conclusions supporting the board's revocation order contain no mention at all of when appellant was convicted or when he committed the acts that led to his convictions. Paragraphs one and two of the board's conclusions of law state as follows:

1. Based upon the evidence shown, the Board concludes that Dr. Yaghmaee pled guilty to two counts of Insurance Fraud, misdemeanors of the first degree in violation of Ohio Revised Code § 2913.47(B)(1) and two counts of Worker's [sic] Compensation Fraud, misdemeanors of the first degree in violation of Ohio Revised Code § 2913.48.
2. The Board concludes that these misdemeanors were implicitly committed in the course of his chiropractic practice.

(Sept. 12, 2003 Adjudication Order.)

{¶19} It is clear the board's order is based solely upon the fact that appellant's convictions constitute circumstances that render chiropractors properly subject to disciplinary action pursuant to R.C. 4734.31(C)(5); the scope and duration of the conduct that led to the criminal proceedings against appellant was immaterial to the board's conclusions. Moreover, the notice letter plainly informed appellant that "the law or rule directly involved" in the proceedings was R.C. 4734.31(C)(5) and that the "charges or other reasons for the proposed action" were appellant's four misdemeanor convictions.

{¶20} Given that notice and evidence of appellant's misdemeanor convictions were all that was necessary to support the board's revocation of his license, we do not perceive that the board's presentation of facts that could have supported additional criminal convictions prejudiced appellant in any way. Any additional evidence going beyond the simple fact of appellant's convictions was likewise not prejudicial because the

same were fully incorporated into the notice letter by reference therein to appellant's indictment and plea agreement documents.

{¶21} We note that the board's Exhibit 3A, a certified copy of the transcript of appellant's guilty plea proceedings, contains a record of the prosecutor's description, for the court, of the underlying facts forming the basis of the counts to which appellant pled guilty. The prosecutor specifies that the four counts to which appellant pled guilty involve acts taken from May 8, 2000 to June 6, 2000 (Count 1), from April 12, 2000 to August 9, 2000 (Count 8), from March 6, 2000 to October 11, 2001 (Count 21), and from March 6, 2000 to October 11, 2001 (Count 22). (Record of Proceedings, Exhibit 3A – Tr. of Guilty Plea, 5-6.) Appellant cannot credibly argue that he had no notice of the time frame within which he was alleged to have committed the acts forming the basis of his convictions. Likewise, it is apparent that he could not have been taken by surprise and thereby prevented from appropriately defending himself against the allegation that he had obtained convictions properly supporting permanent revocation of his license.

{¶22} We perceive no violation of R.C. 119.07 or of appellant's right to procedural due process. As such, we find no error in the trial court's affirmance of the board's order. Accordingly, we overrule appellant's sole assignment of error, and affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BRYANT and BROWN, JJ., concur.
