RENDERED: FEBRUARY 25, 2011; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-001533-MR

EARLENE F. GREENE — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE GEOFFREY P. MORRIS, JUDGE
ACTION NO. 08-CI-002081

KENTUCKY BOARD OF DENTISTRY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: KELLER, MOORE, AND STUMBO, JUDGES.

KELLER, JUDGE: In December 2007, the Kentucky Board of Dentistry (the Board) placed the license of Earlene F. Greene, D.M.D. (Greene) on probation for five years and ordered her to take yearly continuing education courses in recordkeeping and documentation. Greene sought review of the Board's order and a declaratory judgment regarding the constitutionality of KRS 13B.150 from the

Jefferson Circuit Court. The court found that the Board's order was supported by substantial evidence and that KRS 13B.150 is constitutional. Greene appeals from the court's opinion and argues before us that: there is not sufficient evidence of substance in the record to support the Board's finding that she is a chronic or persistent alcoholic; there is not sufficient evidence of substance in the record to support the Board's finding that she failed to keep written dental and medical history records sufficient to justify the course of treatment of her patient, Donna Borton (Borton); and KRS 13B.150(2)(c) unconstitutionally deprived her of her due process right to adequate relief on appeal.[1] The Board argues to the contrary. For the following reasons, we affirm.

FACTS

Greene has come before the Board two times for disciplinary proceedings, once in 2006 and again in 2007. Only the 2007 matter is currently before us on appeal; however, because the two proceedings are tangentially related, we first set forth the facts related to the 2006 disciplinary proceeding. We next address the facts related to the 2007 disciplinary proceeding. Finally, we set forth the facts related to the circuit court proceeding.

[1] We note that Greene discusses in her brief and that the parties were questioned during oral argument about a dispute she had with the Board regarding the contents of its notification to the National Practitioner Data Bank (the Data Bank). Although this issue is not before us, it appears to us that the report incorrectly indicated that Greene's license had been suspended and that she was "unable to practice safely by reason of alcohol or other substance abuse." Both of these statements appear to be unsupported by the Board's opinion. Greene argued that these misstatements, which it took her more than a year to "correct" have had a devastating impact on her practice. We are concerned by the Board's apparent lack of concern regarding these misstatements and its apparent failure to cooperate with Greene in correcting or explaining them to the Data Bank. However, because this issue is not before us, we can only express our concern.

1. 2006 Disciplinary Proceeding

In March 2006, the Board charged Greene with multiple counts of administering conscious sedation without a valid permit. Prior to a hearing, the Board and Greene entered into a settlement agreement. Pursuant to the terms of the agreement, the Board: issued a reprimand; placed Greene on probation for seven years; fined Greene $3,000.00; required Greene to attend at least six hours of continuing dental education regarding dental anesthesia practice, technique, and safety; and required Greene to submit to monitoring by the Board. The agreement also provided that, after five years of successful compliance, Greene could request termination of the remainder of her probation. Greene complied with the agreement except with regard to payment of the $3,000.00 fine. We note that Greene ultimately paid that fine after the hearing involving the disciplinary action that is the subject of this appeal.

2. The 2007 Disciplinary Action

In this action, the Board brought three charges against Greene, only two of which are pertinent to this appeal. Because the facts surrounding each charge differ, we separately set them forth below.

a. Chronic and Persistent Alcoholism

In the late 1990s, Greene went through a difficult divorce, had to relocate her practice, and lost a brother to cancer. She testified that she began drinking fairly heavily at that time, and the records indicate that she received two or three driving while intoxicated (DUI) citations and had her driver's license suspended. In December 2000, Greene sought assistance from the Kentucky Dental Association's Well-Being Committee (the Well-Being Committee), a committee designed, in pertinent part, to monitor the recovery process for impaired dentists and dental hygienists. It appears from the record that Greene was referred to the Well-Being Committee because she had written four prescriptions for narcotics to her boyfriend. The Well-Being Committee referred Greene to a psychiatrist, Dr. Elliott, for evaluation.

Greene gave Dr. Elliott a history of alcohol abuse that began approximately six years earlier. According to Dr. Elliott, Greene had received one DUI in 1996 and two DUIs in 1997 and underwent treatment for her alcoholism in 1998. She stopped drinking for eight months, then relapsed. However, Dr. Elliott noted that Greene had begun attending a recovery group and had not had any alcohol for approximately five months before seeing him. Dr. Elliott also noted that Greene reported suffering from longstanding depression and that she had treated with Dr. Cox for that condition for twenty-five years. Based on his evaluation, Dr. Elliott made diagnoses of alcohol dependence in partial remission with recurrent major depression.

In June 2001, Dr. Elliott noted that Greene was not attending any alcoholics anonymous (AA) meetings. Dr. Elliott changed his diagnosis to alcohol dependence in remission, but he expressed serious concerns about Greene's stability because of her failure to attend any AA meetings.

In September 2003, Dr. Elliott noted that Greene had not had any alcohol since 2000 and that she was "recovering." Dr. Elliott last saw Greene on April 19, 2006. At that time, he noted that Greene was under investigation for administering conscious sedation without a valid permit. Greene again reported that she was not attending AA meetings but that she had not had any alcohol since 2000. Dr. Elliott continued his diagnosis of alcohol dependence in remission and opined that Greene could continue to safely practice dentistry.

One month later, on May 26, 2006, Greene's vehicle ran off the road and struck a brick mail box. Greene left the scene of the accident to find a telephone. Officer Miller, who responded to the scene, found Greene sitting on a bench in front of a grocery store near the scene of the accident. He smelled alcohol on Greene's breath but, because she apparently had suffered a head injury, he did not perform any field sobriety tests. Because he smelled alcohol, Officer Miller charged Greene with DUI and with leaving the scene of an accident. Officer Miller asked Greene to submit to either a blood alcohol or breathalyzer test and gave her the opportunity to contact an attorney. Greene was unable to contact an attorney, and she refused to submit to either test. In July 2006, Greene entered an

Alford plea of guilty to "first offense DUI" in exchange for a recommended fine of $200.00 plus court costs and a forty-five day suspension of her driver's license.

In January 2007, Greene voluntarily entered into a monitoring agreement with the Well-Being Committee. Pursuant to the agreement, Greene was required to attend three AA meetings per week and to provide the committee's director with a log verifying that attendance. Greene was also required to submit to random drug testing and to report any citations or arrests. Greene did not always timely provide the documentation to verify her AA meeting attendance and, in November 2007, she asked to put the agreement into abeyance pending resolution of the foreclosure on her house and various other matters.

b. Failure to Create and Maintain Records

From November 2004 to October 2006, Borton worked for Greene, answering the telephone, scheduling appointments, and handling billing. In July 2005, Greene performed implant surgery on Borton. In order to perform the procedure, Greene administered an injection of a local anesthetic and nitrous oxide. However, when the bill for this treatment was sent to Borton's insurer, it contained a charge of $233.60 for administration of IV sedation. Shortly after leaving Greene's employ, Borton filed a complaint with the Board alleging, in part, that Greene had fraudulently billed her insurer for a procedure, IV sedation, that had not been performed.

c. The 2007 Administrative Proceedings

On March 7, 2007, the Board filed a notice of administrative hearing and show cause order charging, in pertinent part, that Greene: had a wreck in May 2006 while intoxicated; entered into an *Alford* plea of guilty to DUI; failed to submit documentation as required by her monitoring agreement with the Well-Being Committee; and failed to keep adequate written dental and medical history records regarding her treatment of Borton.[2] In her response, Greene admitted that she had a problem with alcohol abuse; that she was involved in a motor vehicle accident while under the influence of alcohol; that she left the scene of the accident; and that she entered into an *Alford* plea of guilt to DUI. Greene denied that she failed to create and maintain a complete record regarding her treatment of Borton and she argued that any failure to timely file documentation pursuant to the monitoring agreement should be excused.

On November 27, 2007, a panel consisting of two members of the Board and a hearing officer from the Attorney General's office heard testimony regarding the above charges. Because that testimony is crucial to this appeal, we summarize it in detail below.

Dr. Cox testified that he began treating Greene for depression in 1993. Between 1998 and 2001, his treatment related to both depression and alcohol abuse or dependency. Dr. Cox noted that Greene initially had some difficulty overcoming her alcohol dependence; however, she did so by sometime in 2001.

[2] The Board also alleged that Greene fraudulently billed an insurance company for administering IV sedation during Borton's implant procedure. However, the Board ultimately determined that there was insufficient evidence to support this allegation and dismissed the related charge.

According to Dr. Cox, Greene had no alcohol related problems between then and her DUI in 2006. In fact, based on what Greene told him, Dr. Cox believed that Greene's 2006 accident was not the result of alcohol consumption but wet roads. Throughout his treatment of Greene, Dr. Cox made diagnoses of alcohol dependence in either partial remission or remission. He does not believe that Greene "has chronic alcohol dependency, because she seem[ed] to have gained control of this problem back in 2001[,]" with no evidence of ongoing abuse or dependence since then. Furthermore, Dr. Cox testified that, although Greene is alcohol dependent, that differs from being a "chronic and persistent alcoholic." According to Dr. Cox,

> [c]hronic and persistent alcoholism would be the case where, unlike Doctor Morgan [sic] since 2001, she would have either been drinking continuingly [sic] during this time or have many episodes of alcohol intoxication, multiple interferences in her life due to this - - several times a year, typically. . . . I do not think she's a chronic persistent alcoholic.

However, Dr. Cox also testified that he believed that "once an alcoholic, always an alcoholic," that he agreed with Dr. Elliott's assessment that Greene is a "recovering alcoholic," and that she should avoid drinking alcohol.

Borton testified that Greene had performed implant surgery in July 2005 and had not used IV sedation. However, when she received a statement from her insurer, Borton noted that her insurer had been charged for IV sedation. Although she recognized this was incorrect, Borton did not report this discrepancy to the Board until after she stopped working for Greene in October 2006.

With regard to the alcohol related charges, Borton testified that, in December 2005, Greene came to the office late one day and smelled of alcohol. However, Borton stated this was the only day she thought Greene was impaired while treating patients and she never saw Greene drinking alcohol while at the office.

Dr. Marquita Pointer (Pointer) testified that she is a practicing dentist and investigator for the Board. Pointer reviewed Greene's records related to Borton's July 2005 implant and noted that the record reflected administration of IV sedation, which was not done. Furthermore, although a local anesthetic would have been administered, the record did not contain any reference thereto either.

Brian Fingerson (Fingerson), the director of the Well-Being Committee, testified that he is not a psychiatrist or psychologist. His role with the committee is to refer impaired professionals to a psychiatrist or psychologist for evaluation and treatment. Fingerson then monitors that treatment and the professional's rehabilitation.

Fingerson noted that Greene was involved with the Well-Being Committee when he began working for the committee in 2003. However, he had no personal contact with Greene until December 2006, when she wrote to him saying that "it had been suggested" that she renew her contact with the Well-Being Committee. In January 2007, Greene entered into a monitoring agreement with the Well-Being Committee that required her to attend three AA meetings a week, to submit to random drug screens, and to report any arrests or citations. Fingerson

stated that Greene had not completely complied with the agreement because she had failed to submit some AA meeting attendance logs and had not timely submitted others.

We note that Fingerson expressed a firm belief that successful treatment of alcoholism requires AA or some other formal support group. Therefore, he questioned Greene's commitment to sobriety because of her apparent failure to attend meetings regularly. Finally, although Fingerson stated that alcoholism is chronic and persistent, he agreed that a person who is not drinking is not a chronic and persistent alcoholic.

Greene testified that she began treating with Dr. Cox for depression after her parents died. In the late 1990's, she had some problems related to alcohol abuse, which she attributed to her divorce, the death of her brother, and having to relocate her practice. Dr. Cox helped her with her alcohol abuse problems as did her family, friends, and church. Greene testified that, with that help, she was able to control her alcohol abuse and that she did not drink alcohol for a period of six years.

Greene admitted that she had not always timely provided the documentation required by her 2007 monitoring agreement. However, she stated that she had a number of concerns - theft by an employee, downsizing of office staff, marital problems, and financial difficulties – that prevented her from timely complying. Furthermore, although Greene recognized that AA can be useful in treating alcohol dependence, she testified that she did not find it to be that helpful.

Instead of AA, Greene relies on treatment by Dr. Cox and support from friends and family to help her with sobriety.

As to her May 26, 2006, DUI, Greene testified that she had remarried and her husband had a substance abuse problem, was abusive, and was a habitual criminal. On May 24, two days before her arrest, Greene's husband had been admitted to rehabilitation, and he had left his truck in her office parking lot. She took her husband's truck when she left work and went to her nephew's for dinner. At dinner, in celebration of her husband's admission to rehabilitation, Greene testified that she had a glass to a glass and a half of wine. She stated that she was not impaired when she left her nephew's, that it had been raining, and that she lost control of the truck because she was not used to driving it and it hydroplaned. Because it was late at night and she did not see any lights in nearby houses, she walked to the grocery store looking for a telephone. Greene explained that she was disoriented because she had struck her head on the steering wheel but that she was not drunk. She did not submit to a blood alcohol or breathalyzer test because she was not able to contact her attorney to get advice.

As to the billing, Greene stated that the charge for IV sedation on the statement sent to Borton's insurer was simply a clerical error and that she did not submit the statement to the insurer, Borton did. However, Greene admitted that she did not attempt to correct that error until January 2007, a year and a half after the procedure.

In addition to the preceding, the Board reviewed Dr. Elliott's records and heard testimony from Greene's nephew, who began working for her in the fall of 2006, and three former employees. All four witnesses testified that Greene had not exhibited any evidence of alcohol abuse or impairment while working. Furthermore, Greene's nephew confirmed Greene's testimony that she had only had a glass to a glass and a half of wine the night of her 2006 DUI.

Following the hearing, the panel unanimously found that Greene failed to keep dental and medical history records sufficient to justify a course of treatment. Specifically, the panel found that Greene's records regarding Borton's implant surgery did not contain "what anesthesia was used for several procedures . . . the results of radiographs performed for the procedures . . . recommendations for post-operative analgesia . . . the lot and tracking numbers for the dental implant used . . . tracking numbers for bone graft material used . . . and consent to surgery." The panel determined that the deficiencies in the records in evidence were sufficient to support the need for Greene to take remedial education and training courses on documentation and record keeping. However, they were not sufficient to support suspension of Greene's license.

The panel also found that Greene suffers from chronic alcoholism. In doing so, the panel noted Greene's: 2006 accident; her *Alford* plea of guilt to DUI; her admission that she had "a couple glasses of wine" the night of her accident; her prior DUIs; Dr. Cox's diagnosis of alcohol dependence in remission; Dr. Elliott's diagnosis of alcohol dependence in partial remission; Greene's

participation in the Well-Being Committee program in the late 1990s to early 2000s; her voluntary participation in that program beginning in January 2007; and her failure to comply with the monitoring agreement she signed in January 2007. Finally, the panel stated that Dr. Cox testified that Greene is not "both a chronic *and* persistent alcoholic" (emphasis in original), implying that Dr. Cox never addressed whether Greene is not a chronic *or* persistent alcoholic.

3. The Circuit Court Proceeding

Greene timely filed an original action in circuit court contesting the Board's findings. Following receipt of memoranda and argument of counsel, the court upheld the Board's decision. In doing so, the court determined that KRS 13B.150 is constitutional, noting that the Supreme Court of Kentucky had recently reiterated the standard to be used in reviewing administrative agency decisions in *Kentucky Retirement Systems v. Bowens*, 281 S.W.3d 776, 779-80 (Ky. 2009). Applying that standard of review, the court then found that the Board did not act in excess of its authority and did not deny Greene due process. Furthermore, the court found that Dr. Elliott's records, Dr. Cox's testimony, and Greene's four DUI's were sufficient evidence to support the Board's finding that Greene suffers from chronic alcoholism.

STANDARD OF REVIEW/ANALYSIS

The issues presented require different standards of review and are dependent on different facts. Therefore, we address each issue separately below.

1. Constitutionality

Our standard of review regarding questions of law is *de novo*. *Carroll v. Meredith*, 59 S.W.3d 484, 489 (Ky. App. 2001). Therefore, we review Greene's constitutionality arguments using that standard.

Greene raises two issues with regard to constitutionality. The first is that, because "chronic alcoholism" is not defined in KRS 313.130(6), she was deprived of her constitutionally guaranteed rights to due process and equal protection of the law. The second issue is that KRS 13B.150 unconstitutionally deprives a reviewing court of the ability to meaningfully review administrative agency actions. We address each issue in turn.

KRS 313.130 provides that

> [t]he board may, upon complaint or upon its own motion, after a hearing conducted in accordance with KRS Chapter 13B, issue a private admonishment, reprimand, or place on probation, or may revoke, suspend, refuse to renew, or refuse to issue a license to any dentist for any of the following causes:
> . . .
> (6) Chronic or persistent alcoholism.

As admitted by the Board and pointed out by Greene, KRS Chapter 313 does not provide a definition of what constitutes chronic alcoholism. When a statute does not define terms, they are to "be construed according to the common and approved usage of language . . . " unless they are "technical words and phrases" or "have acquired a peculiar and appropriate meaning in law." KRS 446.080(4); *see also Alliant Health System v. Kentucky Unemployment Ins. Com'n,* 912 S.W.2d 452, 454 (Ky. App. 1995).

Greene's argument on this issue is somewhat confusing. It appears that she is arguing that the panel could not have used a common and approved definition of "chronic alcoholism" because the evidence would not support a finding of that condition if such a definition had been used. That is a substantive evidence argument, not a constitutional one. We address the substantive evidence arguments below. However, assuming that Greene is arguing that the KRS 313.130(6) is constitutionally deficient because the term "chronic alcoholism" is not defined, we will briefly address that argument.

As noted in KRS 446.080(4), words in statutes are to be construed according to their common and approved language. Technical words and phrases, or those with a peculiar meaning in the law, shall be construed according to that meaning. The word alcoholism is a commonly understood word. Furthermore, although Greene argues to the contrary, Dr. Elliott indicated in his December 20, 2000, report that Greene was seeking treatment for her "alcoholism." Dr. Cox testified that he agreed with Dr. Elliott's statement in 2003 that Greene is a "recovering alcoholic," and Greene admitted in her response to the notice of administrative hearing and show cause order that she has a problem with alcohol abuse. Because Greene's own expert witness agreed that she is a recovering alcoholic, there was no need to provide a definition of the term, statutorily or otherwise.

As to the word "chronic," that is not a word that has acquired any peculiar meaning in the law. Therefore, the Board was free to construe it according to its common meaning.

Even if a definition were required, the one offered by Greene - a disease "of long duration or characterized by slowly progressive symptoms; deep-seated and obstinate, or threatening a long continuance; distinguished from acute" - is not helpful to her cause. Dr. Cox, Greene's expert witness, admitted that he agreed with the statement "once an alcoholic, always an alcoholic." That falls within the definition of a disease of long duration. Furthermore, Greene's history of DUIs, her history of treatment with Dr. Cox for alcohol dependence, her admission that she has a problem with alcohol abuse, and her participation in the Well-Being Committee's program in 2000 and 2006 indicate she has a disease of long duration. Therefore, Greene's argument to the contrary notwithstanding, the evidence supported a finding that Greene's alcoholism is chronic. Based on the preceding, we hold that KRS 313.130(6) is not unconstitutional as applied to Greene.

We next address Greene's argument that KRS 13B.150 is unconstitutional. As we understand her argument, Greene believes that KRS 13B.150 is unconstitutional because it negates the requirement that the Board make findings based on a preponderance of the evidence and it mandates that a reviewing court accept all factual findings by the administrative body. We disagree.

As to Greene's first argument, that KRS 13B.150 alters the burden of proof, it appears that Greene is mixing the proverbial apples and oranges. KRS 13B.090(7) provides that the party with the burden of proof can only meet that burden with a preponderance of the evidence. This refers to the quantity of evidence. KRS 13B.150 provides in pertinent part that a court may only reverse an agency's final order if the court finds the order is "[w]ithout support of substantial evidence on the whole record." This refers to the quality of the evidence. Therefore, KRS 13B.150 does not alter the burden of proof. Furthermore, it does not, as Greene argues, remove from the court the ability to determine if substantial evidence exists, it mandates such a determination.

Greene's second argument, that KRS 13B.150 unconstitutionally requires a court to unquestioningly accept the findings of fact by an agency is equally unpersuasive. KRS 13B.150(2)(d) states that, if an administrative agency's final judgment is "arbitrary, capricious, or characterized by abuse of discretion" we may reverse it. Therefore, a reviewing court can, and must, examine an agency's findings of fact to determine if they are arbitrary, capricious or reveal an abuse of discretion. That is not unquestioned acceptance of an agency's findings and is essentially the same standard a reviewing court applies to a jury determination. *See Bierman v. Klapheke,* 967 S.W.2d 16, 18 (Ky. 1998). Furthermore, as noted by the circuit court and the Board, the Supreme Court of Kentucky, as recently as 2009, reiterated that the above standards are appropriate for review of administrative agency final orders. *Kentucky Retirement Systems v. Bowens*, 281

S.W.3d 776, 779-780 (Ky. 2009). We are bound to follow precedent set by our Supreme Court. SCR 1.030(8)(a). Therefore, even if we were inclined to accept Greene's argument as persuasive, which we are not, we can not diverge from standing precedent.

2. Sufficiency of Evidence for Finding of Chronic Alcoholism

Greene argues that the Board did not have sufficient evidence to support its finding that she suffers from chronic alcoholism. When reviewing a decision of a circuit court upholding a final judgment of an administrative agency, this Court must determine if the circuit court's findings upholding that decision are clearly erroneous. When reviewing the agency's final judgment, the circuit court may not reinterpret or reconsider the merits of the case, nor substitute its judgment for that of the agency as to the weight of the evidence. *Johnson v. Galen Health Care, Inc.*, 39 S.W.3d 828, 833 (Ky. App. 2001); *Kentucky Unemployment Insurance Commission v. King*, 657 S.W.2d 250, 251 (Ky. App. 1983); and *Kentucky Racing Commission v. Fuller*, 481 S.W.2d 298, 309 (Ky. 1972). As long as there is substantial evidence in the record to support the agency's decision, the court must defer to the agency, even if there is conflicting evidence. *Kentucky Commission on Human Rights v. Fraser*, 625 S.W.2d 852, 856 (Ky. 1981). With this standard in mind, we review the record to ascertain if the Board's determination that Greene suffers from chronic alcoholism is supported by substantial evidence.

Greene argues that the Board ignored the expert opinion of Dr. Cox that she does not suffer from chronic alcoholism. However, that is not the case. The Board, through its adoption of the hearing panel's recommended findings, stated that it did consider Dr. Cox's testimony. Furthermore, Greene's argument to the contrary notwithstanding, Dr. Cox testified that he agreed with Dr. Elliott's statement that Greene is a recovering alcoholic and Dr. Cox agreed that alcoholism is not curable. That testimony, in conjunction with Greene's history of multiple DUI's and recurrent contact with the Well-Being Committee, is sufficient evidence of substance to support the Board's finding that Greene suffers from chronic alcoholism.

3. Sufficiency of Evidence for Finding that Greene Failed to Keep Adequate Records

Greene argues that the Board's finding that she failed to keep dental and medical history records sufficient to justify a course of treatment is not supported by substantial evidence because it is based on the review of only one record. The standard of review for this issue is the same as for the preceding issue.

In support of her argument, Greene states that Dr. Pointer, the Board's expert witness regarding recordkeeping, agreed that one patient record was not sufficient to determine if a pattern of recordkeeping existed. Greene also argues that Dr. Pointer testified that a review of deficiencies in one patient record is not sufficient to support "a disciplinary action."

During the disciplinary hearing, Dr. Pointer testified regarding the deficiencies she found in Greene's records regarding the implant she performed on Borton. However, she did not state, or even imply, that deficiencies in one patient record were insufficient to justify discipline. Greene's counsel asked Dr. Pointer if "any mistake in a medical record, in a dental record requires discipline," to which Dr. Pointer responded, "That's not my call." Following an objection by counsel for the Board, Greene's counsel asked and Dr. Pointer responded as follows:

> Q. So my question to you is, in turn - - is the standard of - - for the Board, in terms of you being an investigator and a teacher and those things that you said that you are, any omission from a dental record is by its existence a violation of law and requires discipline, or is there a pattern of omission that raises - - that differs - - that makes it differ from a mistake to a disciplinary action?
>
> A. In my opinion, the absence of that documentation means that this is not standard for complying with our Dental Practice Act law requiring complete documentation on a patient's treatment. Now, whether - - if we looked at many of her records, we could better determine if this is a pattern or if this is the single isolated instance, and we don't have that privilege here. So I couldn't say whether in this particular case, this is a single incident or if this is a pattern for her.

While Dr. Pointer did state that one record does not a pattern make, she did not state that disciplinary action could not or should not be based on deficiencies in one record. Therefore, the record does not support Greene's argument.

Furthermore, we note that 201 KAR 8:430 Section 2(4) provides that "[a] licensee shall be guilty of 'unprofessional conduct' if the licensee: [f]ails to keep written dental records and medical history records that justify the course of

treatment of the patient . . . .” The regulation refers to the patient, not patients; therefore, review of only one patient’s record is not outside the purview of the regulation. Additionally, the regulation does not state that discipline is contingent on a finding of a pattern of failure to keep records. Therefore, we discern no error in the Board’s finding that Greene failed to keep records sufficient to justify a course of treatment.

CONCLUSION

Having reviewed the record and arguments of counsel, we hold that neither KRS 13B.150 nor KRS 313.130 are facially unconstitutional nor are they unconstitutional as applied to Greene. Furthermore, we agree with the circuit court that the record contains sufficient evidence of substance to support the Board’s findings and that the Board did not abuse its discretion. Therefore, we affirm.

ALL CONCUR.

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