

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2016-CA-001123-MR

DAVID P. SANGSTER, M.D.

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE A.C. MCKAY CHAUVIN, JUDGE  
ACTION NO. 10-CI-006159

KENTUCKY BOARD OF  
MEDICAL LICENSURE

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ACREE, COMBS, AND MAZE, JUDGES.

MAZE, JUDGE: David P. Sangster, M.D. (Dr. Sangster) appeals from an order of the Jefferson Circuit Court that affirmed an order of indefinite suspension of his medical license by the Kentucky Board of Medical Licensure (the Board). Dr. Sangster argues that the Board failed to specifically address his exceptions to the hearing officer's order, that the Board's conclusions were not supported by

substantial evidence and that the Board's action was tainted by misconduct and lack of due process. Finding no error, we affirm.

The relevant facts of this action are as follows: In August 2007, a grievance was filed with the Board alleging that Dr. Sangster deviated from the acceptable and prevailing medical practices by prescribing controlled substances to a patient causing her death. Following an investigation and an administrative hearing, the hearing officer concluded that the allegations had been substantially proven. Dr. Sangster filed exceptions to the hearing officer's recommended order. In an order entered on August 2, 2010, the Board's hearing panel adopted the hearing officer's recommended order and issued an order of indefinite suspension of Dr. Sangster's license to practice medicine.

Pursuant to KRS<sup>1</sup> 13B.150, Dr. Sangster filed an appeal to the circuit court from the Board's action.<sup>2</sup> The circuit court stayed the statutory appeal while

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<sup>1</sup> Kentucky Revised Statutes.

<sup>2</sup> This matter has been the subject of two separate appeals. First, while the administrative matter was still pending, the Board filed a declaratory judgment action to allow the use of Kentucky All-Schedule Prescription Electronic Reporting (KASPER) data and reports. The circuit court granted relief to the Board and this Court affirmed that order on appeal. *Sangster v. Kentucky Bd. of Med. Licensure*, 345 S.W.3d 853, 856 (Ky. App. 2010). Second, after filing his statutory appeal, Dr. Sangster separately filed a civil rights action against the Board and the members of the hearing panel. The circuit court dismissed the action, finding that he failed to assert a cognizable cause of action against the Board as a state agency, and that the members of the Board were entitled to quasi-judicial immunity in the performance of their statutory duties. This Court affirmed that dismissal on direct appeal. *Sangster v. Kentucky Bd. of Med. Licensure*, 454 S.W.3d 854, 862 (Ky. App. 2014).

other related matters were pending. Eventually, the appeal was submitted to the court on cross-motions for summary judgment

On October 31, 2013, the circuit court entered summary judgment for the Board and affirmed the order of indefinite suspension. Dr. Sangster filed a motion to alter, amend, or vacate pursuant to CR<sup>3</sup> 59.05. Although a hearing was held on January 13, 2014, the matter lay dormant for over two years. Finally, the circuit court entered an order on July 6, 2016, denying the motion. This appeal followed.

Judicial review of actions by the Board is limited. The courts may only disturb the Board's actions if they: (1) constitute a clear abuse of its discretion; (2) are clearly beyond its delegated authority; or (3) violate the procedure for disciplinary action as described in KRS 311.591. KRS 311.555. This standard is a codification of the test for review of administrative actions set forth in *American Beauty Homes Corp. v. Louisville and Jefferson County Planning & Zoning Comm'n*, 379 S.W.2d 450 (Ky. 1964). On factual issues, a court reviewing the agency's decision is confined to the record of proceedings held before the administrative body and is bound by the administrative decision if it is supported by substantial evidence. *Commonwealth, Transportation Cabinet*

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<sup>3</sup> Kentucky Rules of Civil Procedure.

*Department of Vehicle Regulation v. Cornell*, 796 S.W.2d 591, 594 (Ky. App. 1990). On the other hand, “this Court is authorized to review issues of law on a de novo basis.” *Aubrey v. Office of Attorney General*, 994 S.W.2d 516, 519 (Ky. App. 1998).

In the proceedings before the circuit court, Dr. Sangster argued that the order of indefinite suspension was void *ab initio* due to the hearing officer’s failure to recommend a penalty to the hearing panel. However, the Kentucky Supreme Court recently rejected this argument, holding that KRS 13B.110(1) requires only that the hearing officer make factual findings on the grievance and recommend a disposition of the hearing. The hearing officer is not required to recommend a penalty because the statutory scheme authorizes the hearing panel to impose any penalty. *Kentucky Bd. of Med. Licensure v. Strauss*, 558 S.W.3d 443, 450-53 (Ky. 2018).

Although Dr. Sangster acknowledges this holding of *Strauss*, he continues to argue that the order should be set aside due to the hearing panel’s failure to make specific findings on his exceptions to the hearing officer’s findings. But contrary to Dr. Sangster’s argument, the hearing panel is only required to set forth separate findings of fact and conclusions of law when the final order differs from the hearing officer’s recommended order. *Id.* at 456-57. The Board’s

discretion to review portions of the administrative record is not a requirement to set forth separate detailed findings on all exceptions to the recommended order.

Dr. Sangster next argues that the Board's actions amounted to misconduct, which is a ground for discovery and relief under KRS 13B.150(1). If properly pleaded and proven, a reviewing court may consider allegations of fraud or misconduct by the administrative agency. *See Maggard v. Board of Examiners of Psychology*, 282 S.W.3d 301, 305 (Ky. 2008). The Court in *Maggard* emphasized that claims of fraud or bias by an administrative agency are not subject to the particularity requirements of CR 9.02. *Id.* However, KRS 13B.150 requires that such allegations indicate either arbitrariness in the decision-making process or *ex parte* contact that affected the fairness of the administrative proceeding. *Id.*

Dr. Sangster's allegations fail to meet this threshold. His exceptions related only to the weight and admissibility of the KASPER data and the report of the Board's consultant, as well as the conduct of the administrative hearing. These are matters within the normal scope of appellate review and do not require going outside of the administrative records. Dr. Sangster has not specifically raised these issues as grounds for appeal. Therefore, we decline to address these matters further.

Indeed, the primary issue on appeal is whether the Board's factual findings were arbitrary and whether the agency correctly applied the law to those

facts. The Board found that Dr. Sangster grossly deviated from the acceptable standard of care by prescribing potentially lethal doses of controlled substances, by failing to advise the patient of the risks of those medications, and by failing to adequately monitor the patient's use of those controlled substances when combined with other prescriptions and over-the-counter medications. The Board also concluded that Dr. Sangster's actions contributed to the patient's death. Although Dr. Sangster disagrees with the Board's conclusions, he fails to show that they were unsupported by substantial evidence, that the Board abused its discretion by imposing an order of indefinite suspension, or that the Board acted outside of its statutory authority. Therefore, we find no basis to disturb the circuit court's holding.

Accordingly, we affirm the order of the Jefferson Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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