

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

BUREAU OF PROFESSIONAL LICENSING,

Petitioner-Appellee,

v

NEZIH JAJOU BACHURI, D.D.S.,

Respondent-Appellant.

---

UNPUBLISHED

November 22, 2022

No. 359189

Board of Dentistry

LC No. 21-005818

Before: HOOD, P.J., and JANSEN and K. F. KELLY, JJ.

PER CURIAM.

Respondent, Dr. Nezh Jajou Bachuri, a dentist, appeals as of right the decision of the Michigan Board of Dentistry’s Disciplinary Subcommittee (the DSC), finding him in violation of the Public Health Code, MCL 333.16101 *et seq.*, and sanctioning him with probation, a fine, and order to pay restitution to the complainant, GK. We affirm.

**I. BACKGROUND**

This case originates from a complaint by one of Dr. Bachuri’s former patients, GK, that Dr. Bachuri rendered substandard dental care in January 2019. On January 14, 2019, GK went to Dr. Bachuri for a dental procedure. GK sought the removal and replacement of an old crown on Tooth No. 8 and the application of dental bonding on Teeth Nos. 7, 9, and 10. Dr. Bachuri intended the bonding applied to the latter three teeth to be temporary, a fact he failed to tell GK. Because he did not explain that the bonding was temporary, the bonding stayed in too long. This caused inflammation which caused further damage to Tooth No. 8, and damage to the surrounding teeth and gums.

Approximately two months later, in mid-March 2019, GK experienced bleeding and discomfort when the bonding material started to fall out of her mouth. At that point, GK visited Dr. Mark Morin to fix the issue. Dr. Morin identified several issues, including improper bonding, “poor contour[ing],” significant gum inflammation, and bleeding. Dr. Morin, during the mid-March 2019 visit and subsequent visits, provided dental care to repair the issues with GK’s teeth, including placing new crowns on Teeth Nos. 7 through 10. Dr. Morin’s dental work cost GK \$5,621.

In early April 2019, GK filed a complaint with petitioner, the Bureau of Professional Licensing (the Bureau),<sup>1</sup> about Dr. Bachuri's dental work. The Bureau authorized an investigation and enlisted the help of Dr. Timothy Thomas to review whether Dr. Bachuri's treatment of GK violated the Public Health Code, MCL 333.16101 *et seq.* Dr. Thomas prepared a report and submitted it to the Bureau. In the report, Dr. Thomas found that Dr. Bachuri's care before January 14, 2019, was acceptable, but was "substandard" on January 14, 2019. According to Dr. Thomas, Dr. Bachuri's conduct violated the Public Health Code and did not adhere to minimal standards of acceptable and prevailing practice for dentists.

In mid-April 2020, the Bureau, after concluding its investigation, filed an administrative complaint against Dr. Bachuri. It alleged that Dr. Bachuri had violated MCL 333.16221(a) (performing procedures in a negligent manner) and MCL 333.16221(b)(i) (conduct demonstrated incompetence). Dr. Bachuri unsuccessfully moved for summary disposition of the administrative complaint, and the case proceeded to a hearing before an administrative law judge (ALJ).

At the hearing, Dr. Bachuri, Dr. Thomas, and Dr. Morin testified. Neither the Bureau, nor Dr. Bachuri called GK as a witness. Further, the ALJ qualified Dr. Thomas as an opinion witness, or expert, in dental procedures generally and the performance of work on crowns. Consistent with his report, Dr. Thomas testified that Dr. Bachuri's treatment of GK on January 14, 2019, breached the standard of care, was negligent, and led to her various problems. Dr. Morin testified about the work he performed on GK's teeth and believed, at the end, that she was "happy" with the work he performed. He also expressed concerns about the condition of GK's teeth, noting that he was particularly concerned about decay and additional bone loss. Dr. Bachuri testified about his educational and professional background and summarized records of dental care that he and his associates provided to GK between February 2018 and January 2019.

Two months after the hearing, the ALJ issued a Proposal for Decision outlining its findings of fact and conclusions of law. There, the ALJ found that Dr. Bachuri's treatment of GK on January 14, 2021, violated MCL 333.16221(a) and (b)(i). The ALJ's decision noted Dr. Thomas's expert testimony was un rebutted, and explained that it found credible various points of testimony by Dr. Thomas and Dr. Morin. The ALJ recommended that the DSC adopt its findings that and sanction him as it saw fit. In mid-October 2020, the DSC adopted the ALJ's findings of fact and conclusions of law, and entered an order placing Dr. Bachuri on probation, fining him, and requiring him to pay restitution to GK. This appeal followed.

## II. STANDARD OF REVIEW

"Rulings by disciplinary subcommittees of regulated professionals are reviewed on appeal solely under Const 1963, art 6, § 28." *Bureau of Prof Licensing v Butler*, 322 Mich App 460, 464; 915 NW2d 734 (2017) (citations omitted). Const 1963, art 6, § 28, provides, in relevant part:

All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-

---

<sup>1</sup> The complaint was initially sent to the Bureau of Community and Health Systems, which forwarded it to the Bureau of Professional Licensing.

judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record.

### III. SUFFICIENCY OF THE EVIDENCE SUPPORTING THE DSC DECISION

Many of Dr. Bachuri's claims fall under the overarching argument that there was insufficient evidence to support the ALJ's recommendations and the DSC's conclusions of negligence and incompetence. Under this broader argument, Dr. Bachuri first argues that Dr. Thomas was not a credible witness and may have been biased in favor of the Bureau because he was repeatedly retained by it as an expert. He argues that Dr. Morin was not a credible witness either. Dr. Bachuri further argues that the ALJ erred when it found that Dr. Thomas's expert testimony was un rebutted; ignored GK's initial complaints; made its findings without requiring GK's testimony; and ignored and omitted important facts favorable to Dr. Bachuri. We disagree and address each issue in turn.

The DSC found that Dr. Bachuri violated MCL 333.16221(a) and (b)(i), which provide the following bases for the DSC to impose sanctions:

(a) Except as otherwise specifically provided in this section, a violation of general duty, consisting of negligence or failure to exercise due care, including negligent delegation to or supervision of employees or other individuals, whether or not injury results, or any conduct, practice, or condition that impairs, or may impair, the ability to safely and skillfully engage in the practice of the health profession.

(b) Personal disqualifications, consisting of 1 or more of the following:

(i) Incompetence.

“When reviewing whether an agency's decision was supported by competent, material, and substantial evidence on the whole record, a court must review the entire record and not just the portions supporting the agency's findings.” *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007) (citation omitted). “Substantial evidence” is “evidence that a reasonable person would accept as sufficient to support a conclusion. While this requires more than a scintilla of evidence, it may be substantially less than a preponderance.” *Id.* (quotation marks and citation omitted).

“[I]f the administrative findings of fact and conclusions of law are based primarily on credibility determinations, such findings generally will not be disturbed because it is not the function of a reviewing court to assess witness credibility or resolve conflicts in the evidence.” *Risch*, 274 Mich App at 372 (citations omitted). This Court “may not set aside factual findings supported by the evidence merely because alternative findings could also have been supported by evidence on the record or because the court might have reached a different result.” *Id.* at 373.

#### A. WITNESS CREDIBILITY

On appeal, Dr. Bachuri argues that the opinions and conclusions of Dr. Thomas and Dr. Morin were not credible and, with respect to at least Dr. Thomas, demonstrated a potential bias in favor of the Bureau. Dr. Bachuri argues that Dr. Thomas made several mistakes in his report to the Bureau that made him not credible, and that his work on several hundred cases for the Bureau since 2012, rendered him not credible and potentially biased. He also argues that Dr. Morin was not credible because (1) he drilled off a crown but did not clean the area before taking a photograph, making the “whole area look as bad as possible” to scare GK; (2) he failed to request records from Dr. Bachuri; (3) he may have entered an agreement with GK to fix her crowns in exchange for a letter that allowed her to file her lawsuit against Dr. Bachuri; and (5) his records were incomplete and he did not provide “conveniently missing records” until he was subpoenaed.

Dr. Bachuri’s arguments ask this Court to resolve potential conflicts in the evidence differently than how the DSC may have resolved them. He also requests that this Court disturb the DSC’s credibility determinations. But Dr. Bachuri’s requests are contrary to the standard of review this Court must apply in reviewing decisions of disciplinary subcommittees. See *Risch*, 274 Mich App at 372-373 (stating that administrative findings of fact and conclusions of law based primarily on credibility determinations should not be disturbed because it is not a reviewing court’s function to assess witness credibility or resolve conflicts in the evidence).

Regarding Dr. Thomas, Dr. Bachuri argues that he was not credible and was biased because the frequency of his testimony for the Bureau. His prior testimony for the Bureau did not disqualify him as an expert, and the ALJ was free to determine how, if at all, it affected the weight of his testimony or his credibility. See *Wilson v Stilwill*, 411 Mich 587, 600-602; 309 NW2d 898 (1981) (holding that a trial court may permit cross-examination regarding an expert’s involvement in prior cases brought by a party’s counsel; cautioning that such evidence is only minimally probative of bias and should be carefully scrutinized by the trial court). The ALJ addressed this argument, finding that Dr. Thomas “testified credibly that he usually recommends no violation when reviewing dental records for the Bureau” and “testified credibly.” Further, the ALJ appropriately addressed Dr. Bachuri’s claims that Dr. Thomas was not credible due to minor errors in dates, stating that these minor errors did not affect the ALJ’s credibility determination or opinion regarding negligence and incompetence.

Likewise, the ALJ’s credibility determination regarding Dr. Morin was not in error. Regarding Dr. Morin, Dr. Bachuri asserts that the photograph taken by Dr. Morin was used to scare the patient, he failed to request records from Dr. Bachuri, he may have had an agreement with GK to fix her crowns in exchange for a letter allowing her to file her lawsuit in district court, and he failed to provide Dr. Bachuri with all of his records until he received a letter from Dr. Bachuri’s attorney. Dr. Morin testified that he took the photograph of GK’s teeth to “show the extensive amount that the tissue was damaged.” He also denied any sort of agreement between him and GK surrounding the letter he wrote her on March 18, 2019. And regarding the failure to provide all of his records, Dr. Morin indicated that the COVID-19 pandemic caused staffing issues that delayed processing document requests, and he had lost ownership control over his practice and, by extension, control over records. None of Dr. Bachuri’s assertions are supported by evidence and are, for the most part, contradicted by Dr. Morin’s testimony. Accordingly, we reject Dr. Bachuri’s arguments related to Dr. Morin.

Further, a review of the record demonstrates that there was substantial evidence supporting the DSC's conclusions such that a reasonable person would accept the evidence as sufficient to support the DSC's decision. See *Risch*, 274 Mich App at 372 (defining "substantial evidence"). Dr. Thomas—the only expert qualified at the hearing—testified that Dr. Bachuri's treatment of GK on January 14, 2021, was substandard and negligent. Dr. Thomas also indicated that Dr. Bachuri's treatment led to GK having gum problems. Dr. Morin also testified about the substantial amount of work he had to perform to fix GK's teeth, and expressed concerns about decay and bone loss. The ALJ found the testimony of Dr. Thomas and Dr. Morin credible, and this Court should not disturb those credibility determinations. See *id.* at 372-373. Accordingly, the DSC's decision was supported by competent, material, and substantial evidence. *Id.* at 372. Dr. Bachuri's claim that, had the ALJ, and by extension the DSC, properly considered his testimony, it may have come to a different result does not warrant reversal. See *McBride v Pontiac Sch Dist (On Remand)*, 218 Mich App 113, 123; 553 NW2d 646 (1996) ("When there is sufficient evidence, a reviewing court may not substitute its discretion for that of the administrative tribunal, even if the court might have reached a different result. Great deference must be given to an agency's choice between two reasonable differing views as a reflection of the exercise of administrative expertise.") (citation omitted).

#### B. DR. BACHURI AS AN EXPERT WITNESS

Dr. Bachuri asserts that the ALJ should have considered his testimony as having rebutted Dr. Thomas's expert testimony. He asserts that he is an expert in dental work, the ALJ should have considered his testimony as expert testimony, and the ALJ's failure to do so amount to a legal error. We disagree.

An individual may be qualified to give expert opinion testimony under MRE 702, which provides:

If the court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise if (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

Dr. Bachuri asserts that he provided extensive testimony about his knowledge, skill, experience, training, and education such that he constitutes an expert on the standard of care for dentists. He argues that he rebutted Dr. Thomas's opinion testimony with his own testimony during the June 15, 2021 hearing. Although Dr. Bachuri testified at that hearing, he did not do so as an expert. Dr. Bachuri never sought to admit his testimony as expert opinion testimony. Accordingly, the ALJ correctly found that no other expert testimony rebutted the expert testimony of Dr. Thomas.

Moreover, Dr. Bachuri has arguably abandoned this argument because he has not identified any portions of the June 15, 2021 hearing transcript that support his position that he rebutted Dr. Thomas's testimony. See *Begin v Mich Bell Tel Co*, 284 Mich App 581, 590; 773 NW2d 271

(2009), overruled in part on other grounds by *Admire v Auto-Owners Ins Co*, 494 Mich 10; 831 NW2d 849 (2013) (“A party may not leave it to this Court to search for the factual basis to sustain or reject its position, but must support its position with specific references to the record.”). In any event, most of Dr. Bachuri’s testimony focused on recordkeeping and summarizing his conduct during GK’s visits throughout 2018 and 2019. The only statements by Dr. Bachuri that could be construed as conflicting with the testimony of Dr. Thomas is Dr. Bachuri’s opinion that his dental work for GK met the minimal standards of care. But the fact that the ALJ rejected this self-serving, unqualified opinion testimony and adopted Dr. Thomas’s expert testimony that Dr. Bachuri’s dental work was below the minimal standards of care does not warrant reversal. See *Risch*, 274 Mich App at 373 (indicating that factual findings supported by the evidence may not be set aside merely because alternative findings could also have been supported by record evidence).

### C. FAILURE TO CALL GK AS A WITNESS

Dr. Bachuri also argues that GK should have been called as a witness. He appears to suggest that the Bureau was responsible for calling her as a witness, and believed she would have been a “terrible witness” he could have cross-examined to weaken the Bureau’s case. This argument is without merit.

On appeal, Dr. Bachuri asserts that the patient is always one of the most important witnesses in a licensing case, yet he did not call her as a witness. Dr. Bachuri points to no authority suggesting that it was the Bureau’s responsibility to call the patient as a witness. He presents a list of questions he could have asked GK, but, in our view, they are irrelevant because GK never testified. If her anticipated testimony was such that she “was going to be a terrible witness” for the Bureau, then Dr. Bachuri could have called her as a witness. See MCL 333.16235(1) (providing that, upon application by a “party to a contested case,” the circuit court may issue a subpoena requiring an individual to appear to testify).

### D. FAILURE TO CONSIDER GK’S ORIGINAL COMPLAINTS

Dr. Bachuri also challenges what he characterizes as the ALJ’s decision to ignore GK’s original complaints to the Bureau simply because she did not testify. This argument conflates the separate roles of the investigation and the hearing within disciplinary actions. The Bureau’s administrative complaint did not include all of GK’s original allegations. Rather, it included only those allegations the Bureau believed to be relevant and substantiated with credible evidence. Essentially, the Bureau evaluated GK’s complaints and raised the most serious substantiated allegations in its administrative complaint. Those were the allegations addressed at the hearing, and the only relevant allegations to this case. If anything, the fact that the ALJ did not focus on all of GK’s original complaints, including claims that lacked merit or evidentiary support, may have benefitted Dr. Bachuri. Thus, we agree with the Bureau that the ALJ properly focused his proposed decision on the relevant facts and those that could be substantiated by the physical evidence and witness testimony. Further, the ALJ granted Dr. Bachuri’s request that GK’s entire written allegations be admitted as an exhibit at the hearing. The ALJ, nonetheless, correctly focused on the allegations that were supported with substantial and competent evidence.

### E. IGNORING AND OMITTING FACTS FAVORABLE TO DR. BACHURI

Dr. Bachuri asserts that the ALJ ignored important facts and omitted others that were favorable to him. He points to several paragraphs from the ALJ's Proposal for Decision and claims that the ALJ failed to include facts and arguments favorable to him. This amounts to an argument over credibility and this Court "may not set aside factual findings supported by the evidence merely because alternative findings could also have been supported by evidence on the record or because the court might have reached a different result." *Risch*, 274 Mich App at 372-373. Accordingly, we reject this argument.

In sum, the ALJ's proposed decision and the DSC's conclusions were supported by substantial, competent, and material evidence. The record does not indicate an error warranting reversing the ALJ's credibility determinations or its reliance on material and competent evidence.

#### IV. DISCIPLINARY SUBCOMMITTEE INVESTIGATIVE PROCESS

Next, Dr. Bachuri argues that Dr. Thomas should have been informed about the split between the Board reviewers regarding whether to initiate an investigation because it may have influenced his report. This argument misreads the role of the investigative process related to disciplinary proceedings and is, therefore, without merit.

Under MCL 333.16231(1), a person who believes there was a violation of the Public Health Code may submit an allegation to LARA in writing. If, after review of the allegation, LARA determines that there is a "reasonable basis" for a violation of the Public Health Code it must obtain approval from the Board's allegation subcommittee before initiating an investigation. MCL 333.16231(2). Specifically, the investigation must be authorized by a panel with at least three Board members, including the Board chair "and at least 2 other members of the appropriate board . . . designated by the chair . . ." MCL 333.16231(2)(a). If it obtains panel approval, it "shall investigate the alleged violation." *Id.* "[I]f the panel fails to grant or deny authorization within 7 days after the board . . . receives a request for authorization, the department shall investigate." *Id.* MCL 333.16231a provides for a hearing on the complaint before a hearing examiner. See also MCL 333.16237 (outlining the responsibilities and powers of the DSC in reviewing recommended findings of fact and conclusions of law from the hearing examiner).

GK submitted a complaint to the Bureau regarding Dr. Bachuri in April 2019. Dr. Bachuri relies on two Board review sheets that demonstrate a split between the Board reviewers regarding whether to authorize an investigation. The first, Dr. Patricia Roels, voted to authorize an investigation because there was a possible violation of MCL 333.16221(b)(i). The second, Dr. Vaijanthi Oza, declined to authorize an investigation. Dr. Oza found that this case involved a financial dispute and the patient was "not experiencing any pain/discomfort[.]" Whether one member voted to authorize the investigation and another did not is not particularly relevant given the fact that the investigation *was* authorized, and resulted in a full hearing. The third reviewer voted to authorize the investigation. Critically, the Board reviewers were simply deciding whether to authorize an investigation into whether Dr. Bachuri violated the Public Health Code. Once they did so, it was for Dr. Thomas to evaluate the evidence and form an opinion about whether a violation actually occurred. The ALJ was responsible for vetting Dr. Thomas's opinion within the body of evidence presented at the hearing. And the DSC was responsible for vetting the ALJ's recommendation. Here, Dr. Thomas was free to conclude the same thing that Dr. Oza did in her review sheet, but he was also free to conclude that there was a violation. Dr. Thomas declined

even knowing Dr. Oza and when asked whether he agreed with her assessment that this was simply a financial dispute, he stated that he disagreed. He believed this case involved a standard of care issue. Accordingly, Dr. Bachuri's argument regarding this issue is without merit.

## V. RESTITUTION AWARD

Finally, Dr. Bachuri argues that the amount of the restitution award was not supported by the record and should have been reduced from \$5,621 to \$1,405. We disagree.

There was competent, material, and substantial evidence on the whole record supporting the \$5,621 restitution award. Dr. Morin testified that the work he performed on GK was necessary based on her condition when she went to his office in mid-March 2019. She had extensive bleeding around her implant on Tooth No. 8, which was also the wrong size and poorly contoured, bonding had fallen off, and the bonding on Tooth No. 7 was attached to the implanted crown on Tooth No. 8. Dr. Morin indicated that all of these issues caused food impaction, which prevented proper dental hygiene, and caused GK substantial gum problems. He also testified that he believed Dr. Bachuri's treatment caused these gum problems and issues with GK's teeth, and expressed concerns about decay and bone loss. Dr. Morin performed substantial dental work on GK's teeth to fix her issues, including removing bonding and decay, preparing the teeth for new crowns, placing a healing cap on Tooth No. 8, and making a temporary bridge for GK, as well as final impressions. Dr. Morin testified that all of his work for GK cost \$5,621. Thus, there was competent, material, and substantial evidence on the whole record supporting the \$5,621 restitution award. Moreover, Dr. Bachuri does not explain how he arrived at the \$1,405 figure. Nor does he provide any evidence supporting that figure. See *Begin*, 284 Mich App at 590 (explaining that failure to provide specific citations to the record constitutes abandonment).

We affirm.

/s/ Noah P. Hood  
/s/ Kathleen Jansen  
/s/ Kirsten Frank Kelly