

STATE OF MICHIGAN
COURT OF APPEALS

In re CHESTER B. HANDLEY, D.C.

DEPARTMENT OF COMMUNITY HEALTH,
BUREAU OF HEALTH PROFESSIONS,

UNPUBLISHED
October 18, 2011

Appellee,

v

CHESTER B. HANDLEY, D.C.,

Appellant.

No. 298621
Board of Medicine
LC No. 2009-000155

Before: SHAPIRO, P.J., and SAAD and BECKERING, JJ.

PER CURIAM.

Chester B. Handley, D.C. appeals the final order of the disciplinary subcommittee of the Department of Community Health, Bureau of Health Professions, that suspended his license to practice chiropractic in Michigan for a minimum period of one year for a violation of article MCL 333.16221(b)(iii) of the Michigan Public Health Code, 1978 PA 368, as amended; MCL 333.1101 *et seq.* For the reasons set forth below, we affirm.

I. FACTS AND PROCEEDINGS

Appellee filed an administrative complaint against Handley in October 2008 that charged him with four violations of the Michigan Public Health Code. Of relevance to this appeal, appellee alleged that Handley filed fraudulent or deceitful billing claims with Blue Cross Blue Shield (BCBS) for chiropractic care. Appellee submitted evidence that Handley was charged in 2004 with four counts of health care fraud, MCL 752.1003(3). In exchange for a plea to four misdemeanor counts of larceny \$200-\$1,000, MCL 750.356(4)(a), the health care fraud charges were dismissed. Appellee also introduced exhibits showing that the larceny convictions arose out of the BCBS complaint that Handley knowingly sought and received payments from BCBS during the operation of his chiropractic practice based on false statements or false representations of material fact. Handley was originally ordered to pay restitution to BCBS in the amount of \$93,730.24. This order was later dismissed when Handley agreed to not sue BCBS and appellee agreed to not pursue additional charges against Handley up to the sentencing date. The order also stated that BCBS could pursue any and all remedies against Handley as permitted by law.

In his defense, Handley testified that he has been practicing chiropractic in Michigan since 1983. Handley initially stated that he did not plead guilty to committing health care fraud, but he later acknowledged that the charges arose out of BCBS's claim of fraud in his billings.

In his proposal for decision (PFD), the hearing officer determined that, while Handley disputed that any of the four larceny convictions were related to the BCBS billings from his clinic, BCBS was the victim as set forth in the disposition documents and that removal of the restitution requirement from Handley's sentence did not change the character of the convictions. The hearing officer concluded that even absent the full plea transcript, it was clear the larceny convictions involved BCBS and third-party reimbursement claims. He found that the four larceny convictions were the result of fraudulent misconduct and that appellee had accordingly proven by a preponderance of the evidence that Handley violated MCL 333.16221(d)(iii). The Michigan Board of Chiropractic Disciplinary Sub-Committee accepted the hearing officer's findings of fact and conclusions of law, and suspended Handley's license to practice chiropractic in Michigan for a minimum period of one year.

II. ANALYSIS

On appeal, we review the record to determine whether the subcommittee's decision to adopt the hearing officer's PFD is supported by "competent, material and substantial evidence on the whole record." Const 1963, art 6, § 28; *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). "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." *Dowerk v Oxford Charter Twp*, 233 Mich App 62, 72; 592 NW2d 724 (1998). "A reviewing 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, citing *Black v Dep't of Social Servs*, 212 Mich App 203, 206; 537 NW2d 456 (1995).

Following a hearing at which Handley testified and numerous exhibits were admitted, the hearing officer determined that Handley violated MCL 333.16221(d)(iii), which prohibits:

(d) Unethical business practices, consisting of 1 or more of the following:

* * * *

(iii) Fraud or deceit in obtaining or attempting to obtain third party reimbursement.

Handley argues that appellee failed to present any evidence establishing fraud, and that no proof of damages was properly admitted.

The statute Handley violated refers to unethical business practices consisting of "fraud or deceit," not just fraud. Though Handley contends that there had to be clear and convincing evidence of fraud, again, in an appeal from an administrative hearing, the hearing officer's findings must be supported by "competent, material and substantial evidence on the whole record." Const 1963, art 6, § 28; *Risch*, 274 Mich App at 372. We hold that this standard was

satisfied. While Handley testified that he did not plea to charges of fraud, he admitted several times that BCBS claimed he participated in fraudulent acts, specifically in his billing of Acute Care. The sentence and hearing disposition forms admitted into evidence show that Handley was charged with health care fraud involving a false statement. The Felony Information also reveals that the original charges involved health care fraud by Handley against BCBS. Regardless of Handley's denial of fraud on the record, the four larceny convictions were based on underlying claims of health care fraud by Handley with BCBS as the victim. While the order of restitution to BCBS was later dismissed, it indicated that Handley agreed to not sue BCBS and appellee agreed to not pursue additional charges against Handley up to the date of sentencing.

Given the "substantial evidence" standard we utilize on review, *Dowerk*, 233 Mich App at 72, a reasonable person would accept this as sufficient to support a conclusion that Handley violated MCL 333.16221(d)(iii) while conducting his chiropractic care practice.

Affirmed.

/s/ Douglas B. Shapiro
/s/ Henry William Saad
/s/ Jane M. Beckering