

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0232**

In the Matter of the Medical License of Michael D. Castro, D.O.

Filed December 20, 2021

Affirmed

Worke, Judge

Office of Administrative Hearings
File No. OAH 21-0903-36311

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Considered and decided by Worke, Presiding Judge; Florey, Judge; and Bryan,
Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Relator challenges respondent's order to issue a public reprimand against his medical license. Relator argues that the order is (1) an error of law, (2) unsupported by substantial evidence, and (3) arbitrary and capricious. We affirm.

FACTS

In March 2018, respondent Minnesota Board of Medical Practice (board) received a complaint regarding relator Dr. Michael D. Castro's care of a patient. In April 2018, the

board sent a letter to Castro's address requesting the patient's medical records. Castro did not respond to the board's request. In June, the board sent another request for the patient's medical records to Castro. Castro again failed to respond to the board's request. In July, the board sent a third request by way of certified mail. The United States Postal Service's tracking system indicated that the letter was delivered on July 25. Castro again failed to respond.

In November, the attorney general's office served on Castro by mail at the same known address documents which included a notice requesting Castro's appearance at a conference to discuss the complaint. Castro did not attend this conference.

In May 2019, the board received a complaint from a second patient of Castro. In June, the board sent Castro a letter requesting the patient's medical records. Castro did not respond to this letter.

On June 20, the board sent a request to Castro regarding an audit of his continuing-medical-education (CME) requirements. This request was sent to the same address that the requests for medical information were sent. Castro replied to the board's inquiry by informing them that his CME requirements were satisfied.

In August, the board served Castro with a notice and order for prehearing conference and hearing. The purpose of the conference was to determine whether discipline against Castro's medical license was appropriate for his failure to cooperate with the board investigations into the patients' complaints. Castro attended the conference.

An administrative-law judge (ALJ) held a hearing in July 2020 to determine if Castro's medical license should be disciplined for his failure to cooperate with board

investigations. The ALJ determined that Castro failed to cooperate with the board's investigations. The board adopted the ALJ's conclusion that Castro failed to cooperate with the investigations and ordered that Castro be reprimanded. This certiorari appeal followed.

DECISION

An administrative agency's decision is presumed correct. *In re Cities of Annandale & Maple Lake NPDES/SDS Permit Issuance*, 731 N.W.2d 502, 513 (Minn. 2007). We review an agency's final decision in a contested case in accordance with the Minnesota Administrative Procedure Act (MAPA), Minn. Stat. §§ 14.001-.69 (2020). *Eneh v. Minn. Dep't of Health*, 906 N.W.2d 611, 613 (Minn. App. 2018). A reviewing court may remand, reverse, or modify the agency's decision if the decision: (a) violates a constitutional provision, (b) exceeds the statutory authority or jurisdiction of the agency, (c) is made upon unlawful procedure, (d) is affected by other error of law, (e) is unsupported by substantial evidence, or (f) is arbitrary or capricious. Minn. Stat. § 14.69.

“Boards and commissions like the Board of Medical Examiners are appointed because of their special expertise regarding the standards of their own professions.” *Padilla v. Minn. State Bd. of Med. Exam'rs*, 382 N.W.2d 876, 886 (Minn. App. 1986), *rev. denied* (Minn. Apr. 24, 1986). Therefore, “[w]hen a professional person must be disciplined for breaching these standards, the nature and duration of the discipline is best determined by his or her fellow professionals, who are in a superior position to evaluate the breaches of trust and unprofessional conduct.” *Id.* at 886-87.

Error of law

Castro argues that the board's decision to publicly reprimand him for failing to cooperate with their investigation is based on an error of the law. Although the correctness of an agency's decision is presumed, appellate courts may reverse a decision if it "was affected by an error of law." *N. States Power Co. v. Minn. Pub. Utils. Comm'n*, 344 N.W.2d 374, 377 (Minn. 1984). "Appellate courts retain the authority to review de novo errors of law which arise when an agency decision is based upon the meaning of words in a statute." *In re Claim for Benefits by Meuleners*, 725 N.W.2d 121, 123 (Minn. App. 2006) (quotation omitted).

The board determined that Castro failed to fully cooperate with two investigations regarding patient complaints. Castro argues that he never received actual notice of the board's investigations, and his failure to reply does not amount to a failure to cooperate. The board argues that the standard procedure for physician notification of an investigation was followed, and that Castro received sufficient notice.

At the hearing before the ALJ, the manager of the board's complaint review unit (CRU) testified to the board's procedures following the receipt of a complaint from a patient. She testified that after receipt of a complaint, one of the first steps would be to "request a response from the licensee involved, and they would do that by . . . sending a letter to the address on file with the Board." The manager was then asked if she had participated in the investigations of each complaint since she began working with the CRU in 2017. She confirmed that she had. When asked if she was involved in Castro's investigations, the manager replied, "Yes, I was involved in managing the file." The

manager’s testimony supports the argument that the board followed standard practices to notify Castro of their investigations.¹

The board “may impose disciplinary action as described in section 147.141 against any physician.” Minn. Stat. § 147.091, subd. 1 (2020). Castro’s “[f]ailure to make reports as required by section 147.111 or to cooperate with an investigation of the board as required” allows for this remedy. *Id.*, subd. 1(u). Castro is considered a “physician who is the subject of an investigation by or on behalf of the board [who] shall cooperate fully with the investigation.” Minn. Stat. § 147.131 (2020). Castro’s mandated cooperation with the board’s investigations “includes responding fully and promptly to any question raised by or on behalf of the board relating to the subject of the investigation and providing copies of patient medical records, as reasonably requested by the board, to assist the board in its investigation.” *Id.*

Castro is required by statute to “maintain a current name and address with the board and shall notify the board in writing within 30 days of any change in name or address.” Minn. Stat. § 147.091, subd. 2(e) (2020). Castro is required to “cooperate fully” with any board investigation. *See* Minn. Stat. § 147.131. The phrase “cooperate fully” is not expressly defined by statute. However, Castro is required to ensure that the board had a valid mailing address on file to receive board communications. The record supports Castro receiving communications from the board during the timeframe of the investigations.

¹ During the manager’s testimony, Castro’s foundation and hearsay objection was sustained, twice. The ALJ sustained the objections without clarification as to whether the objection was sustained on foundational grounds or as hearsay. Both objections were sustained as improper foundation.

Castro replied to a letter mailed by the board about mandatory CME requirements. The board sent the CME letter to the same address as letters sent by the board to notify Castro of two separate investigations. Castro demonstrated that he could receive board correspondence at this address. Therefore, we agree with the agency's decision that Castro's failure to respond to the board's written notices would be considered a failure to cooperate fully.

Substantial evidence

Next, Castro argues that the board failed to present substantial evidence that he received proper notice of the investigations. "With respect to factual findings made by the agency in its judicial capacity, if the record contains substantial evidence supporting a factual finding, the agency's decision must be affirmed." *In re Excelsior Energy, Inc.*, 782 N.W.2d 282, 290 (Minn. App. 2010) (quotation omitted). An agency's decision is considered supported by substantial evidence when that decision "is supported by (1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety." *Minn. Ctr. for Env't. Advoc. v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 464 (Minn. 2002). An analysis of a substantial-evidence determination requires the reviewing court to "determine whether the agency has adequately explained how it derived its conclusion and whether that conclusion is reasonable on the basis of the record." *Minn. Power & Light Co. v. Minn. Pub. Utils. Comm'n*, 342 N.W.2d 324, 330 (Minn. 1983).

The board's decision to publicly reprimand Castro was reasonable after viewing the record in its entirety. Castro is required to "cooperate fully" with a board investigation. Minn. Stat. § 147.131. Castro is required to "maintain a current name and address with the board." Minn. Stat. § 147.091, subd. 2(e). The board presented substantial evidence showing that Castro received their letter referencing his CME requirements at the address Castro designated to the board. Based on the evidence presented by the board, it is reasonable that the board found Castro's failure to respond to their mailings as a failure to cooperate on his part.

Here, the board's findings of fact, conclusions, and order were thoroughly detailed by well-supported documentation. The board's conclusion is well supported by the record and by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *See Minn. Ctr. for Env't Advoc.*, 644 N.W.2d at 464. Therefore, we reject Castro's argument that the board's decision was not supported by substantial evidence.

Arbitrary or capricious

Finally, Castro argues that the board's decision was arbitrary or capricious. An agency's decision is arbitrary or capricious if it represents the agency's will and not its judgment. *Pope Cnty. Mothers v. Minn. Pollution Control Agency*, 594 N.W.2d 233, 236 (Minn. App. 1999). An agency's decision is considered arbitrary or capricious if

the agency (a) relied on factors not intended by the legislature; (b) entirely failed to consider an important aspect of the problem; (c) offered an explanation that runs counter to the evidence; or (d) the decision is so implausible that it could not be explained as a difference in view or the result of the agency's expertise.

Citizens Advocating Responsible Dev. v. Kandiyohi Cnty. Bd. of Comm'rs, 713 N.W.2d 817, 832 (Minn. 2006). “If there is room for two opinions on a matter, the [board]’s decision is not arbitrary and capricious, even though the court may believe that an erroneous conclusion was reached.” *In re Rev. of 2005 Ann. Automatic Adjustment of Charges*, 768 N.W.2d 112, 120 (Minn. 2009).

Here, the board’s decision to publicly reprimand Castro was reasonable. Castro is required to maintain an updated contact address with the board. The board sent written notice of their investigations to the address Castro provided to the board. Castro did not respond to these letters. However, Castro did respond to a board letter unrelated to the investigations during the same timeframe as the investigations. Castro’s failure to reply to letters pertaining to board investigations, while responding to a board letter unrelated to their investigations, amounts to a failure to cooperate on his part. The board’s decision to publicly reprimand Castro’s license had a rational connection to his conduct. Therefore, the board’s decision was not arbitrary or capricious.

Affirmed.