COURT OF APPEALS
DECISION
DATED AND FILED

July 31, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP151 **Cir. Ct. No. 2010CV749**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

JACK A. ELDER, D.D.S.,

PETITIONER-APPELLANT,

V.

WISCONSIN DENTISTRY EXAMINING BOARD,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for La Crosse County: TODD W. BJERKE, Judge. *Affirmed*.

Before Blanchard, P.J., Sherman and Kloppenburg, JJ.

¶1 KLOPPENBURG, J. The Wisconsin Dentistry Examining Board (the Board) disciplined Jack Elder for making "a false representation on his application for a license to practice dentistry in California, which constitutes unprofessional conduct within the meaning of WIS. STAT. § 447.07(3)(b)," and for

instructing "employees to change billing dates to obtain insurance payments, which constitutes repeated irregularities in billing and is unprofessional conduct within the meaning of WIS. STAT. § 447.07(3)(k)2." The circuit court, in a thoughtful and comprehensive decision, affirmed the Board's order, and Elder appeals. Elder contends that the Board lacked authority over, and ignored its own rules in interpreting, Elder's statement on California's application for a license to practice dentistry, and that the Board's order regarding billing irregularities is unsupported by evidence in the record. We conclude that the Board acted in accord with the plain meaning of the language of WIS. STAT. § 447.07(3)(b) (2011-12)[1] in disciplining Elder for making a false statement on the California license application, and interpreted both the application and Elder's statement in accord with the ordinary meaning of the words used in the application and Elder's statement. We also conclude that the Board's order regarding billing irregularities "demonstrates a process of reasoning supported by evidence in the record." *See* ***Daniels v. Wisconsin Chiropractic Examining Bd.***, 2008 WI App 59, ¶8, 309 Wis. 2d 485, 750 N.W.2d 951. Accordingly, we affirm.

BACKGROUND

¶2 Elder was a licensed dentist in Wisconsin who maintained a practice in La Crosse County from 1984 until 2007, when he sold the practice and moved to California. In July 2008 the Wisconsin Department of Regulation and Licensing (now known as the Department of Safety and Professional Services) issued a formal complaint against Elder, and an administrative hearing was held

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

on the following issues: (1) whether Elder made a false statement on his application for a license to practice dentistry in California, and (2) whether Elder engaged in billing irregularities that constituted misconduct.[2]

¶3 The administrative law judge (ALJ) who presided at the hearing issued a proposed decision that included findings of fact and conclusions of law, resolving the two issues stated above against Elder. The ALJ recommended as proposed discipline that Elder's dental license be suspended for six months, with the suspension lifted to the extent that Elder be required to perform 500 community service hours as a volunteer dentist at a health organization that serves the indigent. The Dentistry Examining Board issued a final decision and order adopting the findings of fact and conclusions of law proposed by the ALJ, but varying from the proposed decision with regard to the recommended discipline. The Board permanently prohibited Elder from practicing dentistry in Wisconsin. On reconsideration, the Board again declined to accept the ALJ's recommended discipline but modified the discipline the Board itself had imposed. The Board revoked Elder's dental license, prohibited him from applying for reinstatement for two years, and placed requirements on any petition for reinstatement.

¶4 Elder sought judicial review of the Board's decision, and the circuit court remanded to the Board to explain the variance from the ALJ's proposed

[2] The parties use the term "formal complaint" to refer to the "complaint" that is served by the Department of Regulation and Licensing's Division of Enforcement on a licensee, which initiates a disciplinary proceeding under WIS. ADMIN. CODE §§ SPS 2.03(2) and (5), and 2.05 and 2.06. The parties distinguish such a "formal complaint" from an "informal complaint," which in this context refers to written information submitted by a person to the Division of Enforcement or the Board alleging professional misconduct. *See* WIS. ADMIN. CODE § 2.03(7). We follow the parties' lead and use the terms "formal complaint" and "informal complaint" in the same way.

discipline "in further detail."[3] On remand, the Board issued a final decision and order and an explanation of the variance, and the circuit court subsequently affirmed the Board's decision in its entirety.

DISCUSSION

¶5 Upon review of a circuit court's order affirming an administrative agency's decision, we review the decision of the agency, not that of the circuit court. ***Doepke-Kline v. LIRC***, 2005 WI App 209, ¶10, 287 Wis. 2d 337, 704 N.W.2d 605. Elder raises two sets of arguments against the Board's decision, one set that addresses the Board's conclusion that he made a false statement on the California license application, and one set that addresses the Board's conclusion that he instructed employees to change billing dates to obtain insurance payments. As we will explain, we reject each of Elder's arguments. Because Elder's arguments involve different facts and invoke different standards of review, we set forth the relevant facts and applicable standards of review in the sections relating to each argument.

False Statement on California License Application

¶6 The facts relevant to this topic are taken from the exhibits and Elder's testimony presented at the administrative hearing.

[3] *See* WIS. STAT. § 227.46(2), which provides that "where a majority of the officials of the agency who are to render the final decision are not present for the hearing, the hearing examiner presiding at the hearing shall prepare a proposed decision .... If an agency's decision varies in any respect from the decision of the hearing examiner, the agency's decision shall include an explanation of the basis for each variance."

¶7 By letter dated February 9, 2006, addressed to Elder's attorney and shared with Elder, an attorney with the Department of Regulation and Licensing's Division of Enforcement sent Elder "a copy of the informal complaint" that the Division had received on December 12, 2005, containing allegations of billing irregularities in the form of "improper insurance claim filing."[4] In the letter, the Division attorney concluded: "I appreciate the additional information you were able to supply about the background of [the] informal complaint."

¶8 On March 21, 2006, Elder signed an application for a license to practice dentistry in California, which he subsequently submitted to the Dental Board of California. A question on the application asked, "Are you currently the subject of any investigation by any governmental entity?" Elder answered "No." In addition, Elder signed the "Declaration" on the application certifying that he had "carefully read the questions in the foregoing application and [had] answered them truthfully." The California license application form did not provide a definition for the term "investigation."

¶9 At the Wisconsin administrative hearing at issue here, Elder testified on direct examination that he did not understand that he was under investigation by the Department of Regulation and Licensing in any respect when he signed the California license application in March 2006. He testified on cross examination that he had hired an attorney to help with the informal complaint identified in the February 2006 letter, that he was running audit reports in response to that informal complaint for delivery to his attorney, and that when he completed the California

[4] The informal complaint also contained additional allegations that were not pursued at the administrative hearing and are therefore not relevant on appeal.

license application his attorney was working on that informal complaint and thought it would be easily resolved.

¶10 The Board adopted the ALJ's findings of fact that Elder had been informed by the February 2006 letter that an informal complaint alleging billing irregularities had been filed against him, and that the "investigation" of that matter had not been closed at the time that he completed the California license application saying that he was not currently the subject of any investigation by any governmental entity. The ALJ found that Elder's testimony on direct examination, that he did not understand that he was under investigation, was not credible. The ALJ also found that testimony to be contrary to the 2006 letter from the Division of Enforcement, and inconsistent with Elder's testimony on cross examination. Accordingly, the ALJ concluded that Elder made a false statement on the California license application, and the Board adopted that conclusion.

¶11 Elder argues that the Board's conclusion should be reversed because the Board lacked authority over, and ignored its own rules in interpreting, Elder's statement on California's application for a license to practice dentistry. We reject Elder's arguments as contrary to the unambiguous language of the applicable statute and to the ordinary meaning of the word "investigation."

¶12 Elder argues first that the Board "exceeded its authority by exercising jurisdiction under WIS. STAT. § 447.07(3)(b) over Dr. Elder's application for a license to practice dentistry in California," because "the applications that are the subject of section 447.07(3)(b) are only those submitted to the State of Wisconsin for licensure." This issue requires that we interpret and apply WIS. STAT. § 447.07(3)(b).

¶13 Statutory interpretation is a question of law that this court reviews de novo. ***ABKA Ltd. P'ship v. DNR***, 2002 WI 106, ¶29, 255 Wis. 2d 486, 648 N.W.2d 854. Courts generally accord great weight deference, due weight deference, or no deference to an administrative agency's construction of a statute. *See* ***Racine Harley-Davidson, Inc. v. State Div. of Hearings & Appeals***, 2006 WI 86, ¶¶12-19, 292 Wis. 2d 549, 717 N.W.2d 184. Elder suggests, and the Board appears to agree, that this court owes no deference to the Board's interpretation of its authority under WIS. STAT. § 447.07(3)(b). We therefore follow the parties' lead and assume without deciding that no deference is appropriate. *See* ***Lake Beulah Mgmt. Dist. v. DNR***, 2011 WI 54, ¶23, 335 Wis. 2d 47, 799 N.W.2d 73 ("When interpreting the scope of an agency's authority conferred by statute, we give no deference to the agency's interpretation of its own authority.").

¶14 We construe statutory language based on its common and ordinary meaning. ***Barritt v. Lowe***, 2003 WI App 185, ¶6, 266 Wis. 2d 863, 669 N.W.2d 189. "[I]f a word is not defined in a statute, we look ... to recognized dictionary definitions to determine the common and ordinary meaning of a word." ***Garcia v. Mazda Motor of America, Inc.***, 2004 WI 93, ¶14, 273 Wis. 2d 612, 682 N.W.2d 365. If the language is plain and unambiguous, our analysis stops there. ***Kangas v. Perry***, 2000 WI App 234, ¶8, 239 Wis. 2d 392, 620 N.W.2d 429.

¶15 WISCONSIN STAT. § 447.07(3)(b) reads as follows:

> (3) ... [T]he examining board may make investigations and conduct hearings in regard to any alleged action of any dentist or dental hygienist, or of any other person it has reason to believe is engaged in or has engaged in the practice of dentistry or dental hygiene in this state, and may, on its own motion, or upon complaint in writing, reprimand any dentist or dental hygienist who is licensed or certified under this chapter or deny, limit, suspend or revoke his or her license or certificate if it finds that the dentist or dental hygienist has done any of the following:

> ….
>
> (b) Made any false statement or given any false information in connection with an application for a license or certificate or for renewal or reinstatement of a license or certificate or received a license or certificate through error.

¶16 As it applies to dentists, the language of WIS. STAT. § 447.07(3) is unambiguous. It authorizes the Board to investigate *any* action by *any* dentist who practices in Wisconsin and to discipline *any* dentist who is licensed in Wisconsin, and the unambiguous language of § 447.07(3)(b) authorizes discipline for *any* false statement on *an* application for a license. Nothing in the language of this statute limits the Board's disciplinary authority to statements only on applications for a Wisconsin license.

¶17 Focusing on WIS. STAT. § 447.07(3), Elder argues that the Board may investigate actions related only to the practice of dentistry in Wisconsin, "not for status as a dentist." Elder bases this argument on the phrase "engaged in the practice of dentistry or dental hygiene in this state," but his argument misses the mark. That phrase qualifies the noun "other person," so as to limit the universe of *individuals* whom the Board may investigate. That phrase does not qualify the noun "action" so as to limit the universe of *conduct* that the Board may investigate. The specific conduct that may be subject to discipline is delineated in the subsections that follow, § 447.07(3)(a)-(o), which leads us to Elder's next argument.

¶18 Focusing on WIS. STAT. § 447.07(3)(b), Elder argues that "*an* application for *a* license" can mean only an application for a license "submitted to the State of Wisconsin." Elder reasons that because surrounding sections 447.03, .04, and .05 deal with licensing and renewal only of Wisconsin licenses, "[t]he word application, as used in section 447.07(3)(b), must therefore be limited to

those applications submitted to the [Department of Regulation and Licensing] on forms developed by the [Department] and grantable or renewable by the [Board]." To conclude otherwise, Elder maintains, would require inserting the word "any" in place of "an" before "application" in § 447.07(3)(b), contrary to accepted principles of statutory construction. *See* ***State v. Schwarz***, 2005 WI 34, ¶20, 279 Wis. 2d 223, 693 N.W.2d 703 ("'One of the maxims of statutory construction is that courts should not add words to a statute to give it a certain meaning.'" (quoted source omitted)).

¶19 We disagree. It is Elder's interpretation that would require adding language to the statute. To accept Elder's interpretation would impermissibly require inserting the qualifying phrase *to practice in Wisconsin* after "an application for a license or certificate" in WIS. STAT. § 447.07(3)(b), contrary to the plain language of the statute as it is worded. The statute uses "an" and "a," and the dictionary definition of "a" (or "an" before nouns beginning with a vowel) is: "[u]sed before nouns and noun phrases that denote a single but *unspecified* person or thing." AMERICAN HERITAGE COLLEGE DICTIONARY 1, 47 (3d ed. 1993) (emphasis added). By using "an" before "application" and "a" before "license," the legislature in § 447.07(3)(b) left "application" and "license" *unspecified*, and therefore applicable to applications for licenses from any state, not just from Wisconsin.

¶20 Elder does not identify any language in WIS. STAT. § 447.07 that limits the reach of (3)(b) without inserting the qualifying phrase *to practice in Wisconsin* after "application for a license or certificate." Nor does he identify any language that connects the prohibition against false statements in applications for licenses in § 447.07(3)(b) to the licensing and renewal provisions in other sections. To the contrary, the broad reach of the term "any ... action" in § 447.07(3)

militates against any such crabbed construction of the phrase "an application for a license" in § 447.07(3)(b).

¶21 For all these reasons, we reject Elder's arguments and conclude that the Board's authority extends to Elder's statement on the California license application pursuant to the unambiguous language of WIS. STAT. § 447.07(3)(b).[5]

¶22 Elder next argues that the Board failed to follow its own rule in interpreting the truthfulness of Elder's negative answer on the California license application. The rule that Elder refers to is WIS. ADMIN. CODE § SPS 2.035, which provides that informal complaints concerning professional licensees are screened by a panel that determines whether the informal complaints will be investigated. In support of his argument, Elder points to: (1) the February 2006 letter enclosing the informal complaint alleging billing irregularities; and (2) hearing testimony by the Division of Enforcement investigator confirming that the Division follows § SPS 2.035, and explaining that the panel may request additional information before deciding whether to proceed with an investigation of an informal complaint. Elder concludes from this evidence and § SPS 2.035 that in March 2006 Elder could have known only that he was the subject of an informal complaint, but he could not have known whether an investigation had been opened since he received the February 2006 letter.

[5] Because we conclude that the statute grants the Board express authority to discipline Wisconsin dentists for false statements in non-Wisconsin license applications, we do not reach Elder's arguments about implied authority. *See* ***Turner v. Taylor***, 2003 WI App 256, ¶1 n.1, 268 Wis. 2d 628, 673 N.W.2d 716 (if a decision on one issue disposes of an appeal, we will not generally decide other issues raised).

¶23 The problem with Elder's argument is that it appears to assume, without a logical basis or supporting authority, that one reasonable reading of the California license application is that the Dental Board of California meant to define "investigation" as it is used in the regulatory scheme set forth in Wisconsin. However, Elder provides no basis for us to conclude that this is a reasonable reading of what the Dental Board of California asked, using simple terms. As noted above, the form itself provided no definition of "investigation." It is illogical to think that California authorities would intend to incorporate narrow, technical definitions for that term from every jurisdiction from which any person might apply for a dental license. Thus, the common and ordinary meaning of the word "investigation" applies here. That meaning is: "[t]he act or process of investigating," which in turn means "[t]o observe or inquire into in detail; examine systematically." AMERICAN HERITAGE COLLEGE DICTIONARY 715 (3d ed. 1993).

¶24 Elder argues that no evidence was presented to show that Elder knew that the Board had in March 2006 opened an investigation, as provided in the rule, into the informal complaint alleging billing irregularities. However, Elder does not argue, and could hardly argue, that there was insufficient evidence to show that Elder was fully aware that the Board was "inquir[ing] into" those allegations.[6]

[6] Indeed, Elder testified that as of March 2006 he had hired an attorney to help him with the informal complaint and his attorney was working on the informal complaint on Elder's behalf.

The State argues that Elder was also aware of an investigation by the Board into a yellow pages advertisement. We do not rely on this investigation for the following reason. In light of seemingly reassuring language in the February 2006 letter from the Division of Enforcement to Elder referring to the yellow pages matter, we cannot say with certainty that Elder should have considered himself to be under investigation in March 2006 as to the yellow pages matter.

¶25 In sum, Elder provides no support for his argument that the word "investigation" on the California license application meant anything other than its common and ordinary definition of "inquire into"; he makes no argument that the evidence was insufficient to show that he was aware that he was subject to an inquiry by the Board into the allegation of billing irregularities. Accordingly, we reject Elder's contention that the Board violated its own rule when it concluded that Elder falsely stated in March 2006 that he was not the subject of an investigation.

¶26 Finally, Elder argues that the Board impermissibly rewrote California's license application to refer to "pending" rather than "current" investigations. Elder bases this assertion on the Board's statements, in its explanation of its variance in the discipline it imposed, that Elder "was well aware of a pending investigation" and that his "act of denying the existence of a pending investigation on his California application was a knowing act of deceit." Elder contrasts these statements with the question on the application, which asked if Elder was "currently the subject of any investigation." We reject Elder's argument as raising a distinction without a difference.

¶27 The issue was whether Elder knew that he was the subject of an investigation at the time that he completed the California license application in March 2006. Saying that Elder "was well aware of a pending investigation," as the Board's explanation was worded, is merely another way of saying that Elder knew he was "currently the subject of any investigation," as the California license application's question was worded. That the investigation of which Elder was aware may have been "pending" does not invalidate the Board's conclusion that he answered the question falsely. Most obviously, the California license application

referred to "investigation" without qualification, and contained no exception for "pending" investigations.

¶28 Moreover, the dictionary definitions of "current" and "pending" confirm that as to an investigation, which we have noted is itself defined as "[t]he act or process" of observing or inquiring into, there is no difference between saying that one knows that he or she is "currently the subject of any investigation" and that one is "aware of a pending investigation." "Current" (or "currently") means "1.a. [b]elonging to the present time. b.[b]eing in progress now." AMERICAN HERITAGE COLLEGE DICTIONARY 340 (3d ed. 1993). "Pending" means "1. [n]ot yet decided or settled; awaiting conclusion or confirmation." AMERICAN HERITAGE COLLEGE DICTIONARY 1010 (3d ed. 1993). Thus, to say that an investigation *currently exists* is to say that the process of inquiring into a matter is in progress at the present time. To say that an investigation *is pending* is to say that the process of inquiry is not yet decided and is awaiting conclusion. That an investigation is in progress (currently) means the same thing as that an investigation is not yet concluded (pending). Elder's argument that there is some meaningful difference between the California license application's use of "currently" and the Board's use of "pending" in this instance defies common usage.

Billing Irregularities

¶29 Elder argues that certain of the Board's statements in its explanation of its variance as to the discipline it imposed are not supported by the evidence in the record, and that therefore the explanation fails to satisfy the criteria set forth in ***Daniels***, 309 Wis. 2d 485, ¶9 (requiring that the Board "explain, in a logical fashion based on the record, the reasons why it takes a different view"). As we

explain below, each of Elder's arguments ultimately calls on this court to upend the Board's credibility findings pertaining to the key fact of Elder's involvement in the fraudulent billing. We ultimately reject Elder's arguments because, in an appeal following an administrative agency decision, we do not pass upon the credibility of witnesses. ***Beecher v. LIRC***, 2003 WI App 100, ¶9, 264 Wis. 2d 394, 663 N.W.2d 316.

¶30 The variance in this case pertained to the discipline imposed for the misconduct that was established at the administrative hearing. Whether to limit, suspend, or revoke a dentist's license lies within the discretion of the Board. *See* WIS. STAT. § 447.07(3); ***Daniels***, 309 Wis. 2d 485, ¶6. If the Board's decision varies from that of the ALJ, the Board must explain the basis for the variance. WIS. STAT. § 227.46(2). The Board's explanation is sufficient if it "demonstrates a process of reasoning supported by evidence in the record." ***Daniels***, 309 Wis. 2d 485, ¶8.

¶31 We understand Elder to be arguing that certain of the Board's statements regarding what the Board called Elder's "knowing involvement in repeated acts of fraudulent billing" flow from findings of fact that are not supported by evidence in the record, and that other evidence "demonstrate[s] the insufficiency and punitive nature of the Explanation."

¶32 When we are called upon to review an agency's findings of fact, we apply the "substantial evidence" standard. ***Milwaukee Symphony Orchestra, Inc. v. DOR***, 2010 WI 33, ¶31, 324 Wis. 2d 68, 781 N.W.2d 674. The supreme court has summarized the substantial evidence standard as follows:

> Substantial evidence does not mean a preponderance of evidence. It means whether, after considering all the evidence of record, reasonable minds could arrive at the

> conclusion reached by the trier of fact. "[T]he weight and credibility of the evidence are for the agency, not the reviewing court, to determine." An agency's findings of fact may be set aside only when a reasonable trier of fact could not have reached them from all the evidence before it, including the available inferences from that evidence.

Id. (quoted source and footnotes omitted).

¶33 Evidence presented at the administrative hearing established specific incidents of inappropriate billing, so as to maximize insurance payments, as to seven patients. Elder did not dispute these instances of inappropriate billing. Rather, he testified that his business coordinator submitted the falsified bills without his knowledge or direction. The business coordinator testified that Elder told her to submit the false billing, that he told hygienists to falsify billing, that others overheard him tell her to bill inappropriately, and that he daily reviewed the "daily operatory schedule" on which she recorded the fraudulent billing.

¶34 The Board found the business coordinator credible, and found that her testimony was supported by evidence of Elder's admitted involvement in and emphasis on the financial aspects of his practice (including daily production "pep-talk[s]" with staff and the retention of a business consultant), Elder's knowledge of the documents used by the business coordinator to record her billing since at least November 2004, and her having not concealed the billing from Elder or other employees. The Board found Elder not credible as to the billing irregularities issue, because his level of immersion in the business aspects of his practice made "it difficult to accept the proposition that [the business coordinator] was committing fraud without his knowledge," and because his disingenuous testimony as to the California license application issue "taint[ed]" his testimony on all other issues. The Board found that Elder told the business coordinator to bill insurance inappropriately, and that other staff either overheard that instruction or

were similarly directed. Elder asserts that there is insufficient evidence to support these findings and the Board's statements in its variance explanation based on these findings.

¶35 In support of his assertions, Elder argues that the Board erred in finding the business coordinator credible in light of the testimony by two other employees; in light of certain of her statements being uncorroborated hearsay; and in light of inconsistencies in her testimony. Therefore, Elder contends, the Board's credibility determinations are not based on substantial evidence. Elder cites no authority in support of his contention that credibility determinations, like findings of fact, must be based on substantial evidence. We could reject his argument on this basis. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) ("Arguments unsupported by references to legal authority will not be considered."). More fundamentally, we reject Elder's contention on the basis that in an appeal following an administrative agency decision, we do not pass upon the credibility of witnesses. ***Beecher***, 264 Wis. 2d 394, ¶9. In light of the Board's findings that the business coordinator's testimony was credible, Elder does not argue that her testimony, if accepted, did not establish the misconduct alleged. Accordingly, we reject Elder's challenge based on the Board's credibility findings.

¶36 We also reject Elder's credibility arguments because they do not undermine the business coordinator's testimony. First, Elder argues that the Board's finding that the business coordinator was more credible than Elder disregarded the testimony by a dental assistant, who testified that in the twenty-three years she had worked for Elder as a dental assistant, Elder never asked her to commit fraud or alter records and that the dental assistant never overheard Elder ask another employee to do so. The dental assistant's testimony does not itself refute the business coordinator's testimony that other employees overheard Elder

instruct the business coordinator to bill inappropriately. Moreover, as the Board noted, the dental assistant knew about the business coordinator's making records on the daily operatory schedule, but she was not involved in the practice's billing work and so "that she had no knowledge of Dr. Elder being involved in inappropriate billing is of no consequence."

¶37 Second, Elder challenges the Board's "credit[ing the business coordinator] over Dr. Elder," because the Board erroneously found that her testimony was supported by the testimony of a front desk employee. Elder argues that the front desk employee's testimony, that she overheard Elder instruct other employees to bill for a two-appointment procedure only at the second appointment, reflected appropriate scheduling practice rather than inappropriate billing practice, and that both the business coordinator and Elder's management consultant testified that "split billing" for two-appointment work is appropriate. Elder presents no evidence showing that split billing for work that actually took place in two different appointments, which was the subject of the testimony that he cites, is the same as the fraudulent billing to which he admitted. Accordingly, his argument that the front desk employee's testimony undermines the business coordinator's testimony is without merit.

¶38 Third, Elder argues that the Board improperly referred to the involvement of other staff in the fraudulent billing, because the business coordinator's testimony that others were involved was uncorroborated hearsay. The Board's statement challenged by Elder is that Elder "directed his staff to accomplish the inappropriate billing, thereby involving other individuals, who

were his subordinates, in his actions."[7] As a matter of fact, the business coordinator was indisputably Elder's staff and his subordinate, and her testimony that he directed her to do the fraudulent billing was not uncorroborated hearsay. Even assuming that the business coordinator testifying about what other employees told her or overheard was uncorroborated hearsay, the Board properly considered such testimony under WIS. STAT. § 227.45(1) ("[A]n agency or hearing examiner shall not be bound by common law or statutory rules of evidence. The agency or hearing examiner shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony ...."). Elder does not argue that the testimony about what other employees told her or overheard should have been excluded under this statute. Moreover, the Board did not rely on that testimony alone in determining what discipline to impose. *See* ***Gehin v. Wisconin Group Ins. Bd.***, 2005 WI 16, ¶56, 278 Wis. 2d 111, 692 N.W.2d 572 ("The rule that uncorroborated hearsay alone does not constitute substantial evidence ... prohibits an administrative agency from

[7] Elder actually conflates the Board's statements in its variance explanation as stating that the Board found "repeated acts ... involving other individuals." The Board first stated, "the record in this matter is replete with examples of [Elder's] knowing involvement in repeated acts of fraudulent billing," and then referred to the "multiple" instances admitted by Elder. The Board then stated:

> Also concerning to the Board is the fact that these were not acts solely engaged in by [Elder]. Rather, he directed his staff to accomplish the inappropriate billing, thereby involving other individuals, who were his subordinates, in his actions.
>
> When questioned about his conduct, [Elder] admitted the acts occurred but claimed it was without his knowledge. This testimony is directly contradicted by [Elder's] staff person who testified that she was specifically directed by [Elder] to perform the acts of fraudulent billing from the inception of the plan. The ALJ clearly found, and the Board adopts the finding, that the staff person's testimony was more credible than that of [Elder].

relying *solely* on uncorroborated hearsay in reaching its decision." (alteration in original)). Rather, the Board also relied on the testimony by the front desk employee, the dental assistant, and Elder himself. Elder's argument based on uncorroborated testimony is unavailing.

¶39 Fourth, Elder argues that the Board ignored inconsistencies in the business coordinator's testimony that undermined her credibility as to Elder's involvement in the fraudulent billing. As the circuit court recognized, Elder's argument inappropriately calls on this court to evaluate the weight of the testimony and make our own determinations of credibility, a function that belongs to the Board and not to the reviewing court. ***Bucyrus-Erie Co. v. DILHR***, 90 Wis. 2d 408, 418, 280 N.W.2d 142 (1979).

¶40 In sum, Elder's arguments fail to establish that the Board's explanation of its variance as to the discipline that it imposed, and the findings of fact on which that explanation is based, were not supported by substantial evidence in the record.

CONCLUSION

¶41 We conclude that the Board acted in accord with the plain language of WIS. STAT. § 447.07(3)(b) in disciplining Elder for making a false statement on the California license application, and that the Board interpreted both the application and Elder's statement in accord with the ordinary meaning of the words used in the application and Elder's statement. We also conclude that the Board's order regarding billing irregularities demonstrates a process of reasoning supported by evidence in the record. Accordingly, we affirm.

By the Court.—Order affirmed.

Not recommended for publication in the official reports.