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IOWA BOARD OF MEDICINE
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Court upholds suspension of license of physician who violated board order

DES MOINES, IA – A Polk County District Court judge has upheld the Iowa Board of Medicine’s decision to suspend the medical license of a physician who repeatedly violated a Board order that disciplined him for being convicted of a felony and engaging in unethical or unprofessional conduct in the practice of medicine.

The ruling by Judge D.J. Stovall on June 5, 2014, said the Board had substantial evidence to support its findings that Richard M. Fleming, M.D., of Reno, NV, failed to comply with a February 9, 2012, order that required him to pay a \$10,000 civil penalty and a \$75 hearing fee, and to complete a professional ethics program and a medical services billing course. The Board took action against Dr. Fleming after he pleaded guilty in U.S. District Court in Nebraska to federal charges of health care fraud and mail fraud.

On June 8, 2012, the Board charged Dr. Fleming with failing to comply with the order. Following an August 16, 2012, hearing, the Board suspended his medical license indefinitely. Dr. Fleming appealed the suspension, disputing issues relating to the conviction of federal charges despite pleading guilty to those crimes.

Judge Stovall said Dr. Fleming, who represented himself in District Court, failed to present relevant information related to the judicial review of the Board’s action to suspend his license.

A cardiologist, Dr. Fleming, 58, has held an Iowa license since 1987.

The following is Judge Stovall’s ruling upholding the Board’s decision:

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

RICHARD MAX FLEMING, M.D.,
Petitioner,
v.
IOWA BOARD OF MEDICINE,
Respondent.

Case No. CVCV009488

**RULING ON PETITION FOR JUDICIAL
REVIEW OF AGENCY ACTION**

Introduction

Petitioner represents himself pro se and submitted a Final Statement in Place of Oral Arguments on April 15, 2014. Respondent is represented by Assistant Attorney General Julie Bussanmas. After considering the parties' submissions and reviewing the court file, it is hereby ordered that the Decision of the Iowa Board of Medicine is AFFIRMED for the following reasons.

Background

On August 21, 2009, Petitioner pled guilty to health care fraud and mail fraud in the United States District Court of Nebraska. Cert. Rec. 17. Since Petitioner was convicted of a felony relating to the medical profession, the Iowa Board of Medicine (the Board) filed formal disciplinary charges against Petitioner on February 4, 2010. *Id.* On February 9, 2012, after the Petitioner had been unsuccessful in attempting to appeal or vacate his plea and sentence, the Board issued a decision outlining Petitioner's penalty. *Id.* at 17–18. Petitioner was issued a citation and warning, placed on probation subject to Board monitoring for five years, assessed a \$10,000 civil penalty, ordered to complete courses in ethics and billings, and assessed a \$75 hearing fee. *Id.* at 18. On June 8, 2012, the Board issued new disciplinary charges for Petitioner's

failure to comply with the terms of the February 9, 2012) Order. *Id.* at 20. A contested case hearing was held on August 16, 2012, and the Board issued its decision on September 17, 2012. *Id.* at 23; Hrg. Tr. 1. The Board suspended Petitioner’s Iowa medical license indefinitely for failure to comply with the terms of the order issued on February 9, 2012, effective until Petitioner was in compliance with said Order. Cert. Rec. 23. Petitioner’s application for rehearing was denied on October 18, 2012. *Id.* at 23.

On November 15, 2012, Petitioner sought judicial review of the Board’s decision. On January 7, 2014, after submitting numerous additional filings, Petitioner filed a Motion for Summary Judgment wherein he also attempted to submit additional evidence for the Court’s consideration. Respondent filed a Motion to Strike Petitioner’s Motion for Summary Judgment, Statement of Undisputed Facts, Memorandum of Law, and Appendices and on February 5, 2014, the Court granted the Motion to Strike. Ruling on Motion to Strike, CVCV009488

(Feb. 5, 2014). Since the Petitioner’s arguments did not pertain to the Board action at issue, the Court then ordered the Petitioner to “submit a brief responding to the Board action currently at issue and in compliance with Iowa Code chapter 17A.” *Id.* at 3. The Court’s ruling explained the deficiencies in Petitioner’s brief and provided guidance as to the proper subject matter it should address. *See id.* at 2–3. After the Court allowed additional time for the Petitioner to comply, the Petitioner resubmitted a brief and he now seeks judicial review of the agency action.

Standard of Review

Chapter 17A of the Iowa Code governs judicial review of administrative agency action. The district court acts in an appellate capacity to correct errors of law on the part of the agency. *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 219 (Iowa 2006). The Court “may grant relief if the agency action has prejudiced the substantial rights of the petitioner, and the agency action meets one of

the enumerated criteria contained in section 17A.19(10)(a) through (n).” *Burton v. Hilltop Care Cntr.*, 813 N.W.2d 250, 256 (Iowa 2012) (quoting *Evercom Sys., Inc. v. Iowa Utils. Bd.*, 805 N.W.2d 758, 762 (Iowa 2011)). Where an agency has been “clearly vested” with a fact-finding function, the appropriate “standard of review [on appeal] depends on the aspect of the agency’s decision that forms the basis of the petition for judicial review”—that is, whether it involves an issue of 1) findings of fact, 2) interpretation of law, or 3) application of law to fact. *Burton*, 813 N.W.2d at 256.

“If the claim of error lies with the agency’s findings of fact, the proper question on review is whether substantial evidence supports those findings of fact.” *Meyer*, 710 N.W.2d at 219. “[A] reviewing court can only disturb those factual findings if they are ‘not supported by substantial evidence in the record before the court when that record is reviewed as a whole.’” *Burton*, 813 N.W.2d at 256 (quoting Iowa Code § 17A.19(10)(f)). A district court’s review “is limited to the findings that were actually made by the agency and not other findings that the agency could have made.” *Id.* However, “[i]n reviewing an agency’s finding of fact for substantial evidence, courts must engage in a ‘fairly intensive review of the record to ensure that the fact finding is itself reasonable.’” *Neal v. Annett Holdings, Inc.*, 814 N.W.2d 512, 518 (Iowa 2012) (quoting *Wal-Mart Stores, Inc. v. Caselman*, 657 N.W.2d 493, 499 (Iowa 2003)).

“Substantial evidence means the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance.” Iowa Code § 17A.19(10)(f)(1).

When reviewing a finding of fact for substantial evidence, we judge the finding in light of all the relevant evidence in the record cited by any party that detracts from that finding as well as all of the relevant evidence in the record cited

by any party that supports it. Our review of the record is fairly intensive, and we do not simply rubber stamp the agency finding of fact.

Evidence is not insubstantial merely because different conclusions may be drawn from the evidence. To that end, evidence may be substantial even though we may have drawn a different conclusion as fact finder. Our task, therefore, is not to determine whether the evidence supports a different finding; rather, our task is to determine whether substantial evidence, viewing the record as a whole, supports the findings actually made.

Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 845 (Iowa 2011) (internal citations and quotation marks omitted).

Discussion

This case is a prime example of the senselessness that can inevitably accompany litigants who choose to represent themselves in complex legal matters. In its previous Ruling, the Court explained in no uncertain terms that Petitioner failed to make arguments pertaining to the agency action currently at issue. Yet, instead of following the Court's directions, the Petitioner has decided to focus on disputing the criminal charges and arguing the Board conducted an unreasonable, "subpar" investigation of the charges against him. Petitioner does not seem to understand how the Board could have found him guilty of a crime, since "petitioner committed no crimes and as such, respondent acted punitively, arbitrarily and capriciously toward Dr. Fleming." Petitioner's Memo. of Law 11. The Petitioner's argument is perplexing given the fact that Petitioner *pled guilty* to the crimes that prompted the Board action in the first place. *See* Cert. Rec. 17. Petitioner made these same arguments at his Request for Rehearing before the Board, to which the Board responded: "[Petitioner] attempts to re-litigate the matters related to his criminal conviction and such matters are not relevant to this case." *Id.* at 222. The Petitioner continues to incessantly put forth irrelevant arguments despite being repeatedly warned of the folly of doing so.

Since Petitioner's brief again does not address the matters directed by the Court, and instead "expounds" on irrelevant issues previously addressed, the Court must treat his failure to

address the pertinent issues as an indication that there is no dispute.¹ As such, substantial evidence supports the Board's September 17, 2012 determination that Petitioner failed to comply with the February 9, 2012 Decision and Order. *See id.* at 19–20 (showing Petitioner admitted to not paying the fine or taking the required ethics and billings courses).

IT IS THEREFORE ORDERED that the Iowa Board of Medicine's decision is **AFFIRMED.**

¹ The Court also notes that Petitioner's Motion for Summary Judgment, Motion for Default Entry, Motion for Default Judgment, Final Statement, along with the various appendices and attachments are equally irrelevant to the matters at hand. Petitioner certainly does not lack zeal; unfortunately, his repeated failure to follow instructions has caused his efforts to be in vain.



State of Iowa Courts

Type: OTHER ORDER

Case Number CVCV009488
Case Title RICHARD MAX FLEMING MD VS IOWA BOARD OF MEDICAL EXAMINERS

So Ordered

A handwritten signature in black ink, appearing to read "D. Stovall".

Dennis J. Stovall, District Court Judge,
Fifth Judicial District of Iowa