COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

Phillip DeMio, M.D.,	:	
Appellant,	:	CASE NO. 22CVF10-7289
-vs-	:	**JUDGE CHRIS BROWN**
State Medical Board of Ohio,	:	
Appellee.	:	

DECISION AND ENTRY AFFIRMING THE ORDER OF THE STATE MEDICAL BOARD OF OHIO

BROWN, JUDGE

I. INTRODUCTION

This action is before the Court upon appeal of Phillip DeMio, M.D. (hereinafter "Appellant" or "Dr. DeMio") from a decision of the State of Ohio Medical Board (hereinafter "Board") permanently revoking his license to practice medicine in this state.

The legal issues have been briefed, and the record of the administrative proceedings has been filed. The Court will address the issues raised by Appellant.

II. FACTUAL AND PROCEDURAL HISTORY

On January 9, 2019, the State Medical Board of Ohio (hereinafter "the Board") issued a Notice of Opportunity for Hearing to Appellant Phillip DeMio, M.D. (hereinafter "Appellant" or "Dr. DeMio"). The Board alleged that with respect to 16 patients identified by a confidential Patient Key, Appellant, *inter alia*, failed to: provide appropriate treatment and/or failed to appropriately document treatment, failed to conduct appropriate physical examinations and vital signs, excessively and inappropriately prescribed controlled substances, failed to appropriately implement specialist recommendations, failed to appropriately refer patients to specialists, failed to complete or document completion of OARRS checks, and provided medical management and/or treatment that was not

appropriate to the patients' diagnosis and/or clinical situation. (Notice, p. 1-2).

Appellant requested an administrative hearing, which was held over eight (8) days. During the extensive hearing, the State presented the testimony of two expert witnesses, Dr. Bradley Jackson and Dr. Tricia Croake-Uleman. In response, Appellant himself provided testimony, along with calling expert witness Dr. Nosson Goldfarb.

On August 17, 2022, the Hearing Examiner issued a Report and Recommendation. After deliberating, the Board adopted all proposed findings of fact and conclusions of law. As to the Hearing Examiner's Proposed Order, the Board rejected the proposed order that only recommended suspension of Appellant's license with conditions for reinstatement/restoration. On September 14, 2022, the Board issued an Order that permanently revoked Appellant's medical license. Appellant timely filed this appeal from the Board's Order.

III. STANDARD OF REVIEW

Pursuant to R.C. 119.12, a reviewing trial court must affirm the order of the Board if it is supported by reliable, probative and substantial evidence and is in accordance with law. *Univ. of Cincinnati v. Conrad*, 63 Ohio St.2d 108, 111 (Ohio 1980); *Pons v. Ohio State Med. Bd.*, 66 Ohio St.3d 619, 621 (Ohio 1993); *Insight Enterprises, Inc. v. Liquor Control Comm.*, 87 Ohio App.3d 692 (Ohio Ct. App., Franklin County 1993).

The quality of the required evidence was defined by the Ohio Supreme Court in *Our Place v. Liquor Control Comm.*, 63 Ohio St.3d 570 (Ohio 1992), as follows:

> (1) "Reliable" evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) "Probative" evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) "Substantial" evidence is evidence with some weight; it must have importance and value. *Id.* at 571.

The common pleas court's review of the administrative record is neither a trial de novo nor an appeal on questions of law only, but consists of "a hybrid review in which the court must appraise all the evidence as to the credibility of the witnesses, the probative character of the evidence and the weight thereof." *Marciano v. Liquor Control Comm.*, 2003-Ohio-2023 (Ohio Ct. App., Franklin County 2003), citing *Lies v. Veterinary Med. Bd.*, 2 Ohio App.3d 204, 207 (Ohio Ct. App., Hamilton County 1981). In undertaking such a review, the court must give due deference to the administrative agency's resolution of evidentiary conflicts, but the findings of the agency are not conclusive. *Id.* However, the court is obligated to accord due deference to the agency's interpretation of the technical and ethical requirements of its profession. *Pons v. Ohio State Med. Bd*, *supra* at 621; *Rossiter v. State Med. Bd*, 155 Ohio App. 3d 689 (Ohio 2004); *Landefeld v. State Med. Bd.,* 10th Dist. Franklin No. 99AP-612, 2000 Ohio App. LEXIS 2556 (June 15, 2000).

The Ohio Supreme Court has recognized that the General Assembly granted the Medical Board a broad measure of discretion. *Arlen v. State Med. Bd.*, 61 Ohio St.2d 168, 174 (Ohio 1980). In *Farrand v. State Med. Bd.*, the Supreme Court stated: "[t]he purpose of the General Assembly in providing for administrative hearings in particular fields was to facilitate such matters by placing the decision on facts with boards or commissions composed of [individuals] equipped with the necessary knowledge and experience pertaining to a particular field." 151 Ohio St. 222, 224 (Ohio 1949).

IV. ANALYSIS AND FINDINGS OF THE COURT

Dr. DeMio in his briefing asserts several legal arguments. First, Appellant contends that the Board fails to account for R.C. 4731.227, the section of the Ohio Revised Code authorizing alternative medical treatments. According to Appellant, this statute permits licensed physicians to utilize alternative treatments and modalities as a compliment to conventional medical care. Appellant insists that the Board did not consider whether his alternative medical treatment was reasonable, after being

compared to the conventional approach. It is submitted that Dr. DeMio used conventional treatment consisting of laboratory testing, referring patients to specialists, and only offered alternative medical treatment as a complement to conventional care. He maintains he did not make up treatment plans "on the fly" or engage in "quackery." Instead, it is alleged that Appellant utilized standards developed by ILADS and the Autism Research Institute. Appellant indicates that because many of his patients had been treated for years with conventional medicine without relief, he offered an alternative that was science based. Consequently, it is argued that the Board failed to account for the proper standard of care assigned to alternative medical treatments.

Next, Appellant argues that the Board failed to adequately explain its departure from the Hearing Officer's report that recommends an indefinite suspension of Dr. DeMio's license, along with probationary terms related to monitoring and reporting requirements. According to Appellant, the Board's divergence from this proposed order fails to satisfy the Board's obligation to adequately explain its rationale under R.C. 119.09, and is based on conjecture, misinterpretation and improper inferences. Thirdly, Appellant claims that the Board and its two experts relied on the wrong standard of care. It is Appellant's contention that Dr. DeMio should not have been held to the standards of the Board's experts, being pain management and pediatric medicine. Instead, it is posited that Appellant's standard of care should have been analyzed under the standard for similar practitioners. This is said to require application of the standard of care for a general practitioner or under the alternative medicine statute.

While acknowledging that the Board is permitted to act as its own expert when deliberating and issuing its order, Appellant submits that the Board relied upon faulty information and drew improper inferences from the record. Finally, Appellant emphasizes that fair notice is a fundamental requirement of due process. It is argued that the Board's conclusions that Dr. DeMio exhibited a

"unfalsifiable belief system", "hubris" and "stubbornness and inability to look inward" are not grounds for sanctioning a medical license in R.C. 4731.22(B), and were not included in the preliminary R.C. 119.07 Notice. As a result, Appellant reasons that this reliance by the Board on psychoanalytical factors cannot be the subject of disciplinary action and violated his due process rights.

In response, Appellee maintains that Appellant is not actually an expert in the very areas he proports to be, Lyme disease and autism, but nevertheless has made a career of using experimental treatments on young patients and violating the Board rules and standard of care for prescribing controlled substances. According to Appellee, this is contrary to recognized medicine and science. It is asserted that alternative medicine does not mean experimental medicine, and recognized treatment of this kind typically involves things such as acupuncture, herbalism, homeopathy, and message therapy used in combination with conventional medicine. Appellee claims that in Dr. DeMio's practice, he was prescribing huge amounts of antibiotics and chelating drugs to children, along with prescribing adult patients large quantities of opioids to manage pain without regard to rules requiring checking OARRS or other safeguards. These practices are described as dangerous, and it is asserted that Dr. DeMio took advantage of vulnerable and desperate people.

Appellee insists that the Board held Appellant to the proper standard of care. It is argued that despite the language of R.C. 4731.227, the State of Ohio does not recognize alternative medicine as a specialty or separate area of medicine. Rather, this section provides for such treatment only as a complementary form of treatment in addition to conventional medicine. It further needs to be reasonable and meet the Board's adopted standards and rules. In this instance, it is alleged that the Board considered the entire record and opinions of the experts testifying at the hearing. In doing so, Appellee claims that the Board considered whether the risks of Dr. DeMio alternative treatment

outweighed the benefits. Furthermore, it is argued that the applicable standard of care is based on the practice of a similar practitioner and is dependent on the medical condition being treated, not the training of the physician. In light of Dr. DeMio's arguments, Appellee reasons it would be impossible to review practices like his for compliance with any recognized standard of care, as integrative holistic medicine has no certifying body or defined standards.

According to Appellee, the Board appropriately explained its rationale for permanently revoking his license. After considering the Hearing Examiner's findings, the Board modified the proposed order to impose a harsher sanction. It is posited that the Board first carefully reviewed all evidence introduced by respected experts and was forced to conclude that this doctor's conduct was so egregious that it could not be remediated and potentially endangers the lives of patients. Moreover, it is argued that Dr. DeMio's lack of medical judgment and disregard for the standard of care threatens current patients, new patients and the community. It is stressed that the Board itself at a meeting in September of 2022 discussed the possibility of a conditional order, which would permanently limit Dr. DeMio's practice to just emergency medicine. However, the State reminds the Court that the majority of Board members voted down that very possibility because a practice of emergency medicine "would likely encounter many of the same types of patients." Appellee cites to the Board's meeting minutes and its deliberations in asserting compliance with R.C. 119.09. Lastly, Appellee claims that it did not consider items outside of the Notice letter in reaching certain conclusions. It is reasoned that Dr. DeMio's due process rights were not violated, as he was given notice that the Board had reason to believe his treatment of 16 of his patients fell below the standard of care, afforded an evidentiary hearing, and given an opportunity to testify and address the Board.

It is from these assignments of error and arguments that the Court reviews the decision issued by the Board. This requires an examination of the record and transcript from the administrative

hearing.

Dr. DeMio graduated from medical school in 1984 from Case Western Reserve. He completed a residency in emergency medicine at Case Western Reserve University Hospital in Cleveland, Ohio, after initially starting as an internal medicine and pathology resident. (Tr. at 19-20). At the time of the hearing, Appellant had been licensed to practice in Ohio for 33 years. Dr. DeMio was first board certified in emergency medicine in 1991. (Tr. at 21). He denied being board certified in any other American Medical specialty such as pediatrics or immunology. (Tr. at 24). During the time of the Board's investigation, Dr. DeMio ran a private medical practice called Whole Health and Wellness. This was established in 2004 near Cleveland, Ohio. A second location was opened in Worthington, Ohio in 2007. Appellant attested to serving around 500 patients, with 40-50% being children. (Tr. at 29-30).

Dr. DeMio testified before the Hearing Examiner. Appellant insisted that there is a link between Lyme disease and autism. He stated that sometimes Lyme disease could potentially cause autism, even though there is no medical organization or scientific studies showing that relationship. (Tr. at 32). Dr. DeMio considers himself an expert in these areas, but has no post-graduate training in immunology, neurology, pediatrics, infectious diseases, autoimmune diseases or mental health disorders. When asked about established and universally accepted facts concerning Lyme disease and autism, he denied knowing what a peer reviewed study entails. (Tr. at 37). In contradiction of the position of the Center for Disease Control, Appellant reasoned that there are many vectors of Lyme disease, including spiders, fire ants, mosquitoes and common environmental causes. (Tr. at 77-78). He testified that autism is a medical biological condition, rather than a mental health condition. (Tr. at 31). Dr. DeMio verified that the information contained on his website at the time of the hearing conveyed this expanded definition of the causes and treatment of Lyme disease. Similarly, Appelant

confirmed that his website sets forth that Autism Spectrum Disorders are treatable and "increasingly, evidence shows that autism is a metabolic, GI, immune and nutritional disorder which is often the result of toxins such as mercury, vaccines, and those that may be in the environment." (Tr. at 1720).

Dr. DeMio admitted that he did not order urine screens or periodically check OARRS when prescribing powerful narcotics to his patients, including opioids. (Tr. at 73). He was unable to recall if he even had an OARRS account or that the Board's rules "were hard and fast rules" that applied to him. (Tr. at 226). Appellant denied regularly (if ever) taking vital signs in his adult patients being prescribed narcotic medications. (Tr. at 234). In Dr. DeMio's practice of integrative medicine at Whole Health & Wellness, he explained that he brings together alternative and conventional medicine. It was his testimony that on a patient to patient basis, this requires a balancing of risks and benefits in determining the reasonable course of treatment. (Tr. at 1155). According to Appellant, while a number of his colleagues "do wonderful things, they have very uniformed view of what he does." (Tr. at 1177). Despite attesting that he extensively relies on laboratory testing in his practice, the hearing evidence demonstrates that Dr. DeMio often continued to prescribe powerful drugs and treatment in spite of negative labs or even when patients failed to show progress. (Tr. at 1161). Specific to autism, Appellant advocates that patients be treated with dietary intervention, specialized nutrition, supplements, encephalitis/viral treatments, detoxification of heavy metals through chelation and neuroimmune treatments. (Tr. at 1721). After confirming the American Academy of Pediatrics' position on the use of chelation for autism, Dr. DeMio insisted he disagrees with their position it is not a recognized form of treatment. (Tr. at 1726).

Moving to the State's expert witnesses, Dr. Jackson received his medical degree in 1988 from Wright State University School of Medicine. *Hearing Exhibit 19A*. He completed an internship and residency program at the University of Cincinnati Department of Pediatrics, Children's Hospital

Medical Center in 1991. (Tr. at 424). Dr. Jackson is board certified in general pediatrics through the American Board of Pediatrics and American Academy of Pediatrics. Currently, Dr. Jackson is President of the Premier Pediatric Group and serves in the government business division of Anthem Insurance. This requires seeing over 3,000 pediatric patients a year. (Tr. at 430-436). While at the time of the hearing Dr. Jackson recently retired from the clinical aspect of his practice, he confirmed when he reviewed Appellant's records he was still practicing in a clinical setting. (Tr. at 441).

Dr. Jackson provided a summary report focused on Dr. DeMio's treatment of the subject minor patients, numbered 6-16. Of these patients, seven were diagnosed with autism and six were diagnosed with Lyme Disease. Dr. Jackson attested that Appellant's treatment of each patient did not comply with the minimal standards of similar practitioners under the same or similar circumstances. According to Dr. Jackson, Dr. DeMio's records displayed an inconsistent amount of information to make a sound judgment on diagnoses. (Tr. at 446, 521). It was his testimony that autism is a neurological disorder that is characterized by the Diagnostic and Statistic Manual of Mental Disorders (hereinafter "DSM-5") that involves an impairment in levels of cognitive abilities, as well as communication and social skills. (Tr. at 447). Dr. Jackson further indicated that the medical community's understanding of autism has changed significantly in the last 20 years, expanding in scope to include autism spectrum disorder. Nevertheless, he noted that since 2014, there has not been any significant interventions in terms of medical modalities in the treatment of autism, outside of a single approved medication called Risperdal. (Tr. at 450). Dr. Jackson denied that there is any scientific evidence that autistic children metabolize metals differently or that heavy metals/toxins cause autism. (Tr. at 453, 542). As such, he denied that any certifying body or peer review has recognized chelation therapy, large amounts of antibiotics or anti-viral mediations as a treatment for autism. (Tr. at 451). Consequently, Dr. Jackson found Appellant's use of chelation and large amounts

of antibiotics in his pediatric patients as reflected in his patient records to be medically unsupported and below the standard of care.

Moving to Lyme disease, Dr. Jackson explained that the American Academy of Pediatrics does not recognize any connection whatsoever between Lyme disease and autism. (Tr. at 454). Lyme disease was defined as a bacterial infection that occurs from the inoculation from a certain tick. (Tr. at 455). The early phases of the disease were said to be characterized by a notable rash. Dr. Jackson added that it is spread to humans through a black legged (deer) tick and the CDC recognizes this is the only vector. (Tr. at 457). In forming his opinions, Dr. Jackson relied upon the Red Book, which is supported by the American Academy of Pediatrics as an infectious disease compendium. (Tr. at 460-462). Upon review of the subject patients' records, Dr. Jackson denied that Dr. DeMio ordered the appropriate laboratory testing. (Tr. at 506). It was expressed that Appellant prescribed medications and/or supplements that were not supported by history, diagnoses or physical examination. (Tr. at 499). For example, Dr. Jackson was asked about Dr. DeMio use of thyroid hormone replacement without certain laboratory indicators. In opining this was not reasonable, Dr. Jackson provided: "[t]here are inherent risks and problems with using hormone therapy for any indications that are not supported by labs that suggest a deficiency." (Tr. at 504). It was emphasized that this is particularly important in the pediatric population, as "these individuals are still growing, and you can impair their growth and can cause more symptoms." *Id.* Similar observations were noted with respect to anti-malarial and anti-parasitic medications.

When asked about the standard of care applicable to Dr. DeMio, Dr. Jackson disagreed with Appellant's position that the witness is unqualified because he does not practice in a similar area of medicine. In attesting that he is qualified to render such an opinion, Dr. Jackson stated as follows:

"And I believe that there is a standard of care that regardless of the

> specialty area, there's a general standard of care, to correct myself, in terms of the management of the pediatric population. There is no specific integrative specialty board for pediatrics. There are other subspecialty divisions for pediatrics; infectious disease, there is developmental, and behavioral pediatrics. Neither of them am I a part of those specialty boards, but the foundation is general pediatrics, and -- which means that we have a general training and background in pretty much all of those areas, no different that oncology and cancer. But the important thing is to be able to know how far the scope of your practice is, and when you believe that you cannot sustain that level of expertise, then I think it's appropriate to refer those individuals to centers of excellence or places with individuals who are able to make the appropriate diagnosis and management." (Tr. at 443).

The State's second expert witnesses, Dr. Tricia Croake-Uleman, reviewed the records for Dr. DeMio's adult patients and provided a written report. Dr. Croake-Uleman received her medical degree in 1998 and completed a residency program in family medicine at Bethesda Family Medicine. (Tr. at 242). She then joined Loveland Family Medicine located just outside Cincinnati. (Tr. at 243). Dr. Croake-Uleman is board certified in family practice medicine. After receiving training on interventional training and pain management training in Arizona, she started a practice in Mason Ohio named Southwest Ohio Pain Management. (Tr. at 245). Dr. Croake-Uleman testified that with respect to patients 1-5, Dr. DeMio failed to obtain urine drug screens or review available OARRS reports. She added that Appellant often failed to take patient history, vital signs, evaluations and formulate a treatment plan, including referral to a specialist. (Tr. at 255). According to Dr. Croake-Uleman, Appellant prescribed dangerous narcotic mediations in violation of the Board's rules. Examples included inadequate medical documentation, prescribing controlled substances for protracted periods of time without seeing patients or establishing a diagnosis of intractable pain, and concomitantly prescribing opiates and benzodiazepines. (Tr. at 258-270). Taken together, Dr. Croake-Uleman attested that these failures on the part of Dr. DeMio falls below the requisite standard care. (Tr. at 256). This includes a failure to maintain minimal standards applicable to the selection or

administration of drugs, or failure to employ acceptable scientific methods in selection of drugs or other modalities for treatment of disease, as set forth in R.C. 4731.22(B)(1).

Dr. Nelson Goldfarb provided testimony at the hearing as Appellant's expert witness. Dr. Goldfarb has been licensed to practice medicine in Ohio since 1994. (Tr. at 746). He completed a residency in pediatrics and the Cleveland Clinic in 1996. (Tr. at 751). Next, he finished a two-year fellowship focused on allergy and immunology. According to Dr. Goldfarb, alternative medicine is complementary to conventional medicine, after the risks and benefits are considered. (Tr. at 757). He explained that integrative medicine begins with a very strong foundation of medical training and then relies on modalities that have been around centuries, like acupuncture. (Tr. at 759). After recalling his role in several private practices, Dr. Goldfarb confirmed his present practice with the Integrative Medicine & Wellness Center. (Tr. at 772). After reviewing Appellant's patient charts, Dr. Goldfarb testified he did not believe Dr. DeMio violated the applicable standard of care in his treatment of patients 1-16. (Tr. at 808). He defined this to be the standard of care that a similar physician in a similar situation with similar patients would do at a minimum. (Tr. at 792). Regarding Appellant's patients, Dr. Goldfarb noted a pattern where these appear to be individuals that have not had their needs met by conventional medicine and sought a holistic integrative approach to medical care. (Tr. at 799). He agreed that integrative medicine is not recognized by the American Board of Medical Specialties, so the standard of care "falls within the realm of the general practice of medicine." (Tr. at 1027). It was also his testimony that a doctor is required to monitor whether a certain medication is effective in treating the condition that is it prescribed. (Tr. at 1083).

Unlike the State's experts, Dr. Goldfarb opined that Appellant's medical records contained "a tremendous amount of information", and "there's communications, prescriptions and an ongoing list of supplements and medications the patients are taking." (Tr. at 806). He agreed that the standard of

care for recordkeeping applies equally to an integrative medicine physician and a pediatrician. (Tr. at 1083). He denied that physical examinations are needed at every visit. However, Dr. Goldfarb admitted that Dr. DeMio failed to run OARRS reports for his adult patients, which is required, and his handwriting was very difficult to decipher. (Tr. at 808, 1027). When directed to individual patient records, Dr. Goldfarb maintained that given certain lab results, long term use of antibiotic, antivirals and antiyeast medications can be medically supported. (Tr. at 827). He defended the use of chelation therapy given the presence of potentially toxic metals. (Tr. at 860). Relying on patient records, Dr. Goldfarb stated that Appellant's use of opiates "is actually relatively minor." (Tr. at 949). It was his testimony that the Board's rules related to intractable pain and prescribing opioid medications were applicable to Dr. DeMio. (Tr. at 1029). Dr. Goldfarb's conclusion was that Appellant met the minimal standards of care for all his adult patients, 1-5. (Tr. at 1013).

R.C. 4731.227 provides the following

> An individual authorized to practice medicine and surgery or osteopathic medicine and surgery may use alternative medical treatments if the individual has provided the information necessary to obtain informed consent from the patient and the treatment meets the standards enforced by the state medical board pursuant to section 4731.22 of the Revised Code and any rules adopted by the board.
>
> As used in this section, "alternative medical treatment" means care that is complementary to or different from conventional medical care but is reasonable when the benefits and risks of the alternative medical treatment and the conventional medical care are compared. "Alternative medical treatment" does not include treatment with an investigational drug, product, or device under section 4731.97 of the Revised Code.

As suggested by both parties, there is a dearth of appellate authority interpreting this section. However, given the recognized rules governing statutory interpretation, the plain meaning of the language contained therein supports the Board's position that Dr. DeMio was obligated to discuss all available options with patients, while meeting the standards and rules from the Board. See *State ex*

rel. Massie v. Bd. of Edn. of Gahanna-Jefferson Pub. Schs, 76 Ohio St.3d 584 (Ohio 1996); *Gerritsen v. State Med. Bd. of Ohio*, 2023-Ohio-943 (10th Dist.). Dr. Jackson similarly expressed that despite any practice of alternative medicine, a practice with pediatric patients practice requires discussion of the benefits and risks of non-conventional medicine, making appropriate referrals to specialists when additional expertise is necessary, and adhering to any rules adopted by the Board. In this respect, the Court finds that the applicable standard of care depends on the medical condition being treated, not the training or board certification of the particular doctor.

In his factual findings, the Hearing Examiner focused on number of patients from the confidential patient key in an effort to show the patient care evaluated. *Report and Recommendation*, p. 7-16. These included summaries for patients 1 through 16. After the hearing, the Hearing Examiner issued a 171-page Report and Recommendation reviewing the evidence in detail. The Hearing Examiner concluded that all alleged violations had been proven as to the acts, conduct and/or omissions sets forth in the Board's Notice. The Hearing Examiner determined that with respect to these 16 patients, Appellant failed to conform to minimal standards of care and failed to maintain minimal standards applicable to the selection or administration of drugs, including opioid and Benzodiazepine medications. (Report, p. 160). A pattern of violations by Appellant were found that: "ignore the realities of addiction", "are contradicted by scientific authorities", "seem naïve", "are dangerous" and "not supported by medical literature." (Report, p. 163). The State presented evidence at the administrative hearing that Appellant excessively and inappropriately prescribed controlled substances, practiced nearly exclusively in specialized areas he did not receive post-graduate residency or fellowship training, and most importantly, did so by use of methods that are not recognized by science or universally accepted sources. The Hearing Examiner noted the following:

"Dr. DeMio prescribed opioid analgesics to Patients 1 through 5,

> sometimes in conjunction with benzodiazepines, for protracted periods of time, without checking OARRS or ordering urine screen toxicology screens. In several cases he prescribed these drugs without personally seeing the patients for up to a year."
>
> "Dr. DeMio's medical recordkeeping was inadequate with respect to all patients."
>
> "[W]ith respect to his care of Patients 6 through 16, [***] Dr. DeMio hold himself out as an expert in the treatment of Lyme disease and other tick and insert-borne diseases, nutritional disorders, and metals toxicity. However, he lacks formal residency or fellowship training in these areas other than what he received in this training as an emergency medicine physician. Further, some of the beliefs that Dr. DeMio stated as facts are contradicted by scientific authorities such as the CDC and the American Academy of Pediatrics and are not supported by medical literature."
>
> "Dr. DeMio also hold himself out as an expert in the treatment of ASD [Autism spectrum disorder]. Again, Dr. DeMio does not have any formal residency or fellowship training in the area but does have a clear personal interest in that subject as the father of an autistic child. Some of Dr. DeMio's beliefs [***] could not be supported with any scientific evidence. [***] It appears irresponsible for a physician to advance unproven treatments or make dangerous claims such as that childhood vaccines can cause autism."

(Report, p. 163). As this suggests, the Hearing Examiner found persuasive and credible the opinions of the State's experts, while rejecting the explanations offered by Dr. Goldfarb and Appellant. In conclusion, the Hearing Examiner authored a Proposed Order that suspends Appellant's medical license for an indefinite period of time following a 30-day winding down. However, the Report and Recommendation did set forth a path for reinstatement after satisfaction of an assessment by the Post-Licensure Assessment System ("PLAS"), ongoing monitoring by the Board, and probationary terms/conditions for at least three years, post-reinstatement. (Report, p. 165-170). In his findings, the Hearing Examiner did reflect that none of the adverse findings or criticisms resulting from the Notice of Opportunity or hearing concerned Dr. DeMio's part-time practice of emergency medicine. (Report, p. 164). It was also noted by Hearing Examiner that the mitigation evidence introduced at

the hearing was significant. Despite its adverse findings, the Report and Recommendation provides that Appellant is a dedicated and compassionate physician who cared about his patients and wasn't trying to enrich himself. In support, the record contains numerous letters in support from both patients and colleagues. The Hearing Examiner observed that Dr. DeMio has taken some steps to remediate these deficiencies, which include putting in place an EMR system, taking courses in medical recordkeeping and controlled substances.

Generally speaking, the Court finds evidentiary support for the Hearing Examiner's findings that Dr. DeMio violated R.C. 4731.22(B) during his treatment of the 16 patient and his care fell below the requisite standard. Appellant regularly failed to discuss long term effects with patients, didn't require urine screening and disregarded the administrative rules that pertain to intractable pain. Referrals were not routinely made to specialists and the resulting medical charts for these 17 patients are devoid of basic diagnosis, examination or treatment plans. Moreover, the record is replete with instances where Appellant disregarded and defied well known principles of science and evidence-based medicine. This includes a categorical rejection of fundamental information and recognized laboratory testing in the treatment of Lyme disease and autism that has general acceptance in the medical community.

Next, the Board conducted its deliberations in September of 2022. In an Order mailed on October 6, 2022, the Board modified the Hearing Examiner's Report and Recommendation by finding that Appellant's medical license should be permanently revoked, effective immediately. During deliberations, a number of Board members expressed numerous concerns for patient safety. They also were clearly persuaded by the testimony of Dr. Jackson and Dr. Croake-Uleman, which collectively opined that Dr. DeMio's treatment of these patients fell below the standard of care.

According to Board member Dr. Michael Schottenstein, "it is fortunate that [Appellant] has

not hurt or killed someone thus far. One cannot prescribe dangerous treatments that actual specialists in the field shy away from because they are lacking in evidence. This manner of practice is reckless and bespeaks hubris. Dr. DeMio does not seems to understand that just because something makes sense to him does not make it true, and that is why there are studies to guide physicians' practice." *Board Minutes*, p. 13. Member Dr. Feibel expressed similar concerns and commented that Appellant's practice "fell below the standards of care in a manner that [***] was reckless and bespoke of hubris with potential for severe harm and death to children." *Board Minutes*, p. 15. During deliberations, the Board further considered limiting Dr. DeMio's license by way of an amendment that would restrict his practice to the area of emergency medicine. However, that motion of limitation failed to pass, leading to the majority voting for permanent revocation. *Board Minutes*, p. 19. At roll call, Board members voted to amend the Order to that of permanent revocation, with 7 members voting in favor, three abstaining and none voting against. *Id.* at 5.

During their deliberations, Board members explicitly rejected any notion that this was recognized alternative or complementary medicine authorized under R.C. 4731.227. The record demonstrates that the Board agreed with the opinions of the State's expert witnesses and the Hearing Examiner's findings that Dr. DeMio failed to conform to minimal standards of care. Furthermore, these Board members are empowered to use their collective expertise to determine whether a violation has occurred and if so, the appropriate sanction after balancing all the circumstances. As stated by the Supreme Court of Ohio in *In re Williams*, 60 Ohio St.3d 85 (1991) and *Arlen v. State Med. Bd.*, 61 Ohio St.2d 168 (1980), a majority of the Board members are experts in the medical field and possess the specialized knowledge needed to determine the acceptable standard of general medicine. While Board appears to have been persuaded by testimony of two experts and critical of Appellant's testimony, the Court is further mindful of the fact that the specialized knowledge of licensed

physicians on the Board renders itself capable of functioning as an expert with respect to the technical requirements of the profession. *Ridgeway v. State Med. Bd.*, 2008-Ohio-1373, (Ohio Ct. App., Franklin County 2008).

Taken as a whole, the record contains competent and credible evidence for the Board to reach its decision of revocation. These considerations constitute more than the requisite "some reliable, probative and substantial evidence" needed to support the agency's order. *Pushay v. Walter*, 18 Ohio St. 3d 315 (Ohio 1985). This Court remains obligated to accord due deference to the agency's interpretation of the technical requirements of its rules and regulations. *Rossiter v. State Med. Bd.*, 155 Ohio App. 3d 689 (Ohio Ct. App., Franklin County Jan. 15, 2004). A review of the record fails to show that the Board made improper inferences given the evidence adduced at the hearing and the fact Board members were persuaded by the conclusions opined from the State's expert witnesses.

The purpose of the General Assembly in providing for administrative hearings in particular fields is to facilitate such matters by placing the decision on facts with boards or commissions composed of people equipped with the necessary knowledge and experience pertaining to a particular field. *Pons v. Ohio State Med. Bd.*, 66 Ohio St.3d 619, 621-22 (Ohio 1993). When the requisite quantum of evidence exists in the record, the common pleas court may not substitute its judgment for that of the Board. *Pope v. Ohio State Dept. of Rehab. & Correction*, 179 Ohio App.3d 377, 382-383 (10th Dist. 2008); *Beeler v. Franklin Cty. Sheriff*, 67 Ohio App.3d 748, 753 (10th Dist.1990) *Steinbacher v. Louis*, 36 Ohio App.3d 68, 71(8th Dist.1987).

In this instance, the necessary quantum of evidence is present in the record. This Court declines to second-guess the evaluation of medical professionals in an area where their expertise is far superior to the Court's. There is considerable deference to be accorded to the Board in such matters. The Ohio Supreme Court has recognized that the General Assembly granted the Medical

Board a broad measure of discretion, particularly in its role to assign the wide array of sanctions available under circumstances. *Arlen v. State*, 61 Ohio St.2d 168, 174 (Ohio 1980). Once a violation is established, the penalty, if legal, is entirely within the province of the agency. Even if the reviewing trial court were inclined to be more lenient, it is powerless to do so given the long-settled rule of *Henry's Cafe v. Board of Liquor Control* (1959), 170 Ohio St. 233, found at paragraph three of the syllabus:

> On such appeal, the Court of Common Pleas has no authority to modify a penalty that the agency was authorized to and did impose, on the ground that the agency abused its discretion.

See *Ross v. State Med. Bd.,* 10th Dist. Franklin No. 03AP-971, 2004-Ohio-2130; *Garwood v. State Medical Board*, 127 Ohio App.3d 530 (10th Dist. 1998); *Orr v. State Med. Bd.*, 10th Dist. Franklin No. 97APE09-1170, 1998 Ohio App. LEXIS 1388 (Mar. 31, 1998); *Roy v. State Medical Bd.* (1992), 80 Ohio App.3d 675; *DeBlanco v. State Medical Bd.* (1992), 78 Ohio App.3d 194; *Sicking v. State Medical Bd.*, 62 Ohio App.3d 387 (10th Dist. 1991). As stated in R.C. 119.09, the Board is within its discretion to adopt the Hearing Examiner's findings, but reject his recommendation of suspension. In so doing, the Board is required to include in the record the reasons for disapproval or modification of this aspect of the recommendation of the Hearing Examiner. *Slingluff v. State Med. Bd.*, 10th Dist. Franklin No. 05AP-918, 2006-Ohio-3556; *Feldman v. State Med. Bd.*, 10th Dist. Franklin No. 98AP-1627, 1999 Ohio App. LEXIS 4613 (Sep. 30, 1999). As noted above, the individual members reasoning and rationale is clearly contained in the Board's lengthy minutes, thereby satisfying any duty under R.C. 119.09 to explain their departure from adopting the Hearing Examiner's Proposed Order of suspension. In reaching this conclusion, the Court places emphasis on the comments articulated by Board members Schottenstein, Feibel and Montgomery.

Appellant's remaining argument appears to be centered around a purported denial of due process. The Court acknowledges that procedural due process is required in administrative proceedings. There is no dispute that R.C. 119.07, along with Section 16, Article I, of the Ohio Constitution and the Fourteenth Amendment to the United States Constitution, mandates that due-process rights, both procedural and substantive, must be accorded to Appellant. Ohio Courts have used the test in *Mathews v. Eldridge* (1976), 424 U.S. 319, as the basis for due process analysis in administrative hearings. *Mathews* requires the court to weigh three factors to determine whether the process granted in the administrative proceeding is constitutionally adequate (1) the private interest at stake, (2) the risk of an erroneous deprivation of that interest and the probable value of additional procedural safeguards, and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail. *Id.* at 335. Courts reviewing due process under administrative law look to ensure "fundamental fairness." *Sohi v. Ohio State Dental Bd.*, 130 Ohio App. 3d 414, 422 (Ohio Ct. App., Hamilton County 1998).

The application of procedural due process had been described as flexible and requires only that the agency provide reasonable notice and opportunity to be heard. *Alcover v. Ohio St. Med. Bd.*, 8th Dist. Cuyahoga No. 54292, 1987 Ohio App. LEXIS 9961 (Dec. 10, 1987). Courts have also determined that medical licensure and certification in a particular practice of medicine confers a protected property interest, thereby afforded due process consideration. *Gross v. Ohio State Med. Bd.*, 10th Dist. Franklin No. 08AP-437, 2008-Ohio-6826.

Appellant claims that matters were considered by the Board that were both outside the scope of the Notice of Opportunity and not subject to discipline. According to Appellant, the Board relied on what have been characterized as "psychoanalytical factors." These include comments by Board

members during deliberations that Dr. DeMio exhibited hubris, stubbornness and an unwillingness to change his subjective belief system, which is contradicted by facts, medical literature and peer review studies. The Court does not employ such a restrictive interpretation of R.C. 119.07. As summarized above, the Notice cites violations of minimal standards of care in prescribing dangerous drugs that are not supported by history, diagnosis, physical exam; failure to complete appropriate toxicology screening; failure to complete appropriate OARRS checks, referrals to specialists and other alleged deviations from the recognized standard of care as described above. Consequently, the so-called psychoanalytical factors highlighted by Appellant merely reflect the Board's position as to whether Dr. DeMio at the hearing exhibited humility and self-reflection, given the established violations. In their discussions, the majority of Board members were forced to conclude Appellant ignored science and gave his vulnerable patients false hope. They ultimately determined that Dr. DeMio's own belief system was dangerous and he appeared incapable of remediation.

In light of these arguments, this Court determines that Dr. DeMio was appropriate advised and fully noticed that his practice raised a number of red flags concerning his medical treatment of these patients. The related investigation took place over four years with Appellant's knowledge. Based on the foregoing, the record does not reflect that Dr. DeMio was denied due process. He was extended a reasonable notice and opportunity to be heard. He appeared and participated in an eight (8) day administrative hearing, where he was represented by counsel. Appellant was afforded an opportunity to call witnesses, testify, as well as the ability to cross-examine opposing witnesses, and introduce legal argument. See *McConnell v. Ohio Bureau of Empl. Servs.*, 1995 Ohio App. LEXIS 4424, at 10 (Ohio Ct. App., Franklin County Oct. 5, 1995). This satisfies the mandates of both procedural and substantive due process, as recognized under Ohio law.

Upon full consideration of the record, arguments of counsel, and applicable case law, the

Court must conclude that the Order of the State Medical Board of Ohio is supported by reliable, probative, and substantial evidence and is in accordance with law. Accordingly, the Court hereby **AFFIRMS** the Order of the State Medical Board.

Rule 58(B) of the Ohio Rules of Civil Procedure provides the following:

> **(B) Notice of filing.** When the court signs a judgment, the court shall endorse thereon a direction to the clerk to serve upon all parties not in default for failure to appear notice of the judgment and its date of entry upon the journal. Within three days of entering the judgment on the journal, the clerk shall serve the parties in a manner prescribed by Civ. R. 5(B) and note the service in the appearance docket. Upon serving the notice and notation of the service in the appearance docket, the service is complete. The failure of the clerk to serve notice does not affect the validity of the judgment or the running of the time for appeal except as provided in App. R. 4(A).

The Court finds that there is no just reason for delay. This is a final appealable order.

The Clerk is instructed to serve the parties in accordance with Civ. R. 58(B) as set forth above.

COPIES TO:
All counsel of record

Franklin County Court of Common Pleas

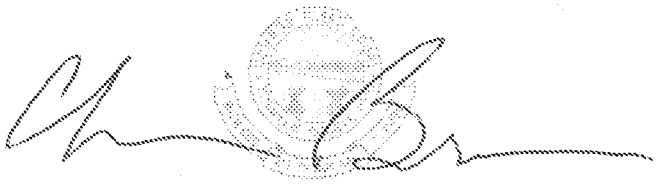
Date: 11-21-2024

Case Title: PHILLIP DEMIO -VS- STATE MEDICAL BOARD OF OHIO

Case Number: 22CV007289

Type: DECISION/ENTRY

It Is So Ordered.



/s/s Judge Christopher M. Brown

Court Disposition

Case Number: 22CV007289

Case Style: PHILLIP DEMIO -VS- STATE MEDICAL BOARD OF OHIO

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes