IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO
GENERAL DIVISION

WILLIAM K. BASEDOW, D.O.,	**:**	
APPELLANT,	**:**	**CASE NO. 15 CV 5733**
vs.	**:**	**JUDGE KIMBERLY COCROFT**
STATE MEDICAL BOARD OF OHIO	**:**	
APPELLEE.	**:**	

DECISION AND ENTRY

COCROFT, J.

This matter is before this Court pursuant to the R.C. 119.12 appeal of appellant, William K. Basedow, M.D., from a June 10, 2015 Order of the State Medical Board of Ohio ("Board"). In the June 10, 2015 Entry of Order (mailed June 23, 2015), the Board suspended Appellant's license to practice osteopathic medicine and surgery in the state of Ohio for an indefinite period of time, but not less than 90 days. The Board's Entry of Order also sets forth permanent limitations and restriction, conditions for reinstatement or restoration, terms, conditions and limitations for a period of probation of at least three years, and reporting requirements. June 10, 2015 Entry of Order.

The record reflects that the Board issued a Notice of Opportunity for Hearing to Appellant on April 9, 2014. The April 9, 2014 Notice alleged the following:

> (1) During the time period of in or about November 2005 to in or about March 2013, you provided care in the routine course of your practice for Patients 1 through 8 as identified in the attached Patient Key (Patient Key confidential and to be withheld from public disclosure).
>
> In your treatment of Patients 1-8, you practiced below the minimal standards of care, including, but not limited to, the following:

(a) Regarding Patients 1-5 and 7-8, you failed to obtain, appropriately review and/or properly document review of patient histories and/or prior medical records;

(b) Regarding Patients 1, 2, 6 and 7, you failed to establish appropriate diagnoses and/or failed to document the establishment of appropriate diagnoses.

(c) Regarding Patients 1-8, the amount and/or type and/or combination of narcotics prescribed was not supported by history, diagnoses, physical exam and/or test findings;

(d) Regarding Patients 1-3, and 5, you inappropriately prescribed high doses of central nervous system depressants despite diagnoses of Narcolepsy, Depression, Anxiety, and/or Substance Abuse.

(e) Regarding Patients 1, 2, 4, and 5, you improperly escalated pain medication and dosage during the course of treatment, despite failing to successfully attain appropriate pain relief and/or failing to document appropriate pain relief;

(f) Regarding Patients 1-3, you failed to develop and/or properly document the development of an individualized treatment plan for the treatment of patients' pain, other than prolonged opiate and/or opioid prescribing;

(g) Regarding Patients 1-4, and 6-7, you failed to appropriately refer and/or document appropriate referral to specialists for behavioral health, mental health, chemical dependency, orthopedic and/or pain issues;

(h) Regarding Patients 1, 2, and 4-6, you failed to appropriately act and/or properly document appropriate action when presented with signs of patient drug abuse and/or diversion;

(i) Regarding Patients 1, 2, and 4-6, you failed to appropriately evaluate, or document the appropriate evaluation with respect to possible adverse drug effects, signs of any illegal drug and/or alcohol use or abuse.

Your acts, conduct, and/or omissions pertaining to Patients 1-7, as alleged in paragraph (1) above, individually and/or collectively, constitute "[f]ailure to maintain minimal standards applicable to the selection or administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease," as those clauses are used in Section 4731.22(B)(2), Ohio Revised Code.

Further, your acts, conduct, and/or omissions pertaining to Patients 1-8, as alleged in paragraph (1) above, individually and/or collectively, constitute "[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

> Further, your acts, conduct, and/or omissions pertaining to Patients 1-and Patients7-8, as alleged in paragraph (1) above, individually and/or collectively, constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter or any rule promulgated by the board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-21-02, Ohio Administrative Code, Utilizing Prescription Drugs for the Treatment of Intractable Pain. Furthermore, pursuant to Rule 4731-21-05, Ohio Administrative Code, violation of Rule 4731-21-02, Ohio Administrative Code, also constitutes violation of Sections 4731.22(B)(2) and 4731.22(B)(6), Ohio Revised Code….
>
> April 9, 2014 Notice of Opportunity.

Appellant requested a hearing which was held over several days on January 5 and 6, 2015, and February 2 and 3, 2015. The Hearing Examiner issued a Report and Recommendation to the Board on May 7, 2015. Hearing Examiner Danielle Blue concluded that Appellant violated R.C. 4731.22(B)(2) and R.C. 4731.22(B)(6), and recommended that his certificate to practice osteopathic medicine and surgery in the State of Ohio be suspended for an indefinite period of time, but not less than 180 days, permanent limitations and restriction, conditions for reinstatement or restoration, terms, conditions and limitations for a period of probation of at least three years, and reporting requirements, among other things. Thereafter, Appellant filed objections to the Report and Recommendation.

The Board approved the Hearing Examiner's Report and Recommendation, as modified, on June 10, 2015. This Entry of Order was mailed to Appellant on June 23, 2015. Appellant filed his appeal to this Court on July 7, 2015.

FINDINGS OF FACT

In her May 7, 2015 Report and Recommendation, Hearing Examiner Danielle Blue made the following findings of fact:

1. During the time period of in or about November 2005 to in or about March 2013, William K. Basedow, D.O., provided care in the routine course of his practice for Patients 2 through 5, 7 and 8 as identified in a confidential Patient Key.

In your treatment of Patients 2 through 5, 7, and 8, Dr. Basedow practiced below the minimal standards of care, including but not limited to, the following:

(a) Regarding Patients 2 through 5, 7, and 8, Dr. Basedow failed to obtain, appropriately review and/or properly document review of patient histories and/or prior medical records.

There are no prior medical records present in the charts for Patients 2 through 5, 7 and 8. More specificially, there is no evidence of any attempt by Dr. Basedow to obtain these patients' prior medical records and, despite a few MRI reports found in their charts, the charts do not include complete medical records from any of the patients' prior physicians.

Although dr. Basedow argued that he was unable to obtain his patients' prior medical records due to the closing of a local hospital, Dr. DiFrangia testified that he should have documented this fact in his patients' charts. Dr. DiFrangia testified convincingly that it is imperative that a physician review prior medical records of a patient before prescribing narcotics because, if it is going to be a long-term medication, it has the potential to have dangerous side effects.

(b) Regarding Patients 2 and 7, Dr. Basedow failed to establish appropriate diagnoses and/or failed to document the establishment of appropriate diagnoses.

Dr. Basedow diagnosed Patient 2 with, among other things, low back pain and narcolepsy based on the patient's subjective history and an examination finding of "paravertebral contracture lumbar bil with restricted motion. Paraverte[b]ral contracture thorax with decreased decreased side bending and rotation bil." When asked to explain this examination finding, Dr. Basedow testified it is a contraction of the lumbar spine muscles. Dr. DiFrangia opined that the objective tests, which included two separate lumbar spine MRIs, were essentially negative. She added that Patient 2's physical findings varied little between office visits. In regard to the narcolepsy diagnosis, Dr. DiFrangia opined that a definitive diagnosis for narcolepsy was never done by Dr. Basedow. In fact, she noted that Patient 2 provided provided the narcolepsy diagnosis to Dr. Basedow and "there was no actual documentation of that diagnosis being made by a sleep study."

Dr. Basedow diagnosed Patient 7 with, among other things, low back pain and knee pain based on the patient's subjective history and an examination finding of "paravertebral contracture lumbar bil with restricted motion. Paraverte[b]ral thorax with decreased side bending and rotation bil." However, Dr. DiFrangia testified convincingly that there is no explanation for her pain because MRIs to Patient 7's thoracic spine and her knees were essentially negative.

(c) Regarding Patients 2 through 5, 7 and 8, the amount and/or type and/or combination of narcotics prescribed was not supported by the history, diagnoses, physical exam and/or test findings.

In regard to Patient 2, Dr. Basedow prescribed Norco, 10/325 mg, 1 tablet four times a daily, for the first three years of treatment, and then, beginning in February 2011, added Oxycotin, 30 mg-40mg, 1 tablet every 12 hours, to Patient's 2's medication regimen. In May 2012, Dr. Basedow added Dexedrine, an amphetamine to Patient 2's mediation regimen. As discussed in Finding of Fact 1(b), Patient 2 was diagnosed with low back pain and narcolepsy despite no objective evidence, no prior medical records and/or physical examination findings to support these diagnoses. Dr. DiFrangia further opined that Patient 2's complaints were out of proportion to and inconsistent with clinical findings.

In regard to Patient 3, Dr. Basedow prescribed methadone, 10 mg, 3 tablets 3 times daily, and Xanax, 1 mg, 1 tablet every 8 hours for diagnoses of back pain and anxiety. Dr. DiFrangia testified that Dr. Basedow continued Patient 3 on the same doses of methadone and Xanax despite not having any prior medical records or consultations. Dr. DiFrangia testified convincingly that there was sufficient information at the time that there was an "increased risk of death with methadone when combined with a benzodiazepine."

In regard to Patient 4, Dr. Basedow prescribed Norco and Valium based on Patient 4's subjective history of back pain and "need for [her] nerves," and an examination finding of "paravertebral contracture lumbar bil with restricted motion." Dr. DiFrangia testified convincingly that Patient 4's complaints required a judicious choice of medication because the risk of dependence with an opioid and a benzodiazepine is high. However, she noted that Patient 4's prior lumbar spine MRI showed no disc herniation and a consultation with a neurologist several months earlier yielded a recommendation of tramadol and gabapentin. She stated that she found no documentation to support Dr. Basedow using a more powerful opioid and adding benzodiazepine.

In regard to Patient 5, Dr. Basedow prescribed Percocet based on the patient's complaint of low back pain, two back surgeries, and an examination finding of "paravertebral contracture lumbar bil side bending and rotation bil." However, Dr. DiFrangia noted that she found no documentation that Dr. Basedow had this patient's prior treatment records or prior surgery records to rely upon in his decision-making process.

In regard to Patient 7, Dr. Basedow prescribed Vicodin and Klonopin based on the patient's complaints of low back pain and stress as well as an examination finding of "paravertebral contracture lumbar bil with restricted motion. Parabertebral thorax with decreased side bending and rotation bil." Dr. DiFrangia opined that there is no clear documentation as to the cause of Patient 7's pain and the MRIs to her thoracic spine and knees do not provide any explanation for the severity of her pain.

In regard to Patient 8, Dr. Basedow prescribed Oxycontin and Vicodin based on the patient's complaint of low back pain. Dr. DiFrangia testified convincingly that Dr.

Basedow appeared to prescribed these medications based on Patient 8's subjective history because there is no documentation that he had prior medical records available for him to consider.

(d) Regarding Patients 2 through 3 and 5, Dr. Basedow inappropriately prescribed high doses of central nervous system depressants despite diagnoses of Narcolepsy, Depression, Anxiety, and/or Substance Abuse.

Dr. DiFrangia testified convincingly that Dr. Basedow inappropriately prescribed multiple central nervous system depressants simultaneously to Patients 2, 3, and 5 despite diagnoses of Narcolepsy, Depression, and/or Anxiety. She opined that the risk of respiratory depression and death is high when doses of benzodiazepines and opioids are mixed. She further opined that his combination does not meet the standard of care for rational prescribing purposes.

(e) Regarding Patients 2, 4, and 5, Dr. Basedow improperly escalated pain medication and dosage during the course of treatment, despite failing to successfully attain appropriate pain relief and/or failing to document appropriate pain relief.

In regard to Patient 2, Dr. Basedow initially prescribed Norco and then added 30 mg of Oxycontin in 2011 to his medication regiment despite Patient 2 reporting no improvement in his pain. In April 2012, Dr. Basedow increased the dosage of Oxycontin from 30 mg to 40 mg, 1 tablet every 12 hours, based upon Patient 2's subjective complaint of pain. Dr. DiFrangia testified convincingly that "prescribing increasing doses of opioids to a patient who reports no improvement deviates from the standard of care."

In regard to Patient 4, Dr. Basedow increased the dosage of hydrocodone from 10 mg at his initial office visit to 40 mg daily over a one month period. Dr. DiFrangia testified convincingly that there is no documentation of Dr. Basedow's medical reasoning for the dosage increase other than Patient 4's complaint that her pain medication was "not holding."

In regard to Patient 5, on December 28,2009, Dr. Basedow increased the dosage of Percocet from 7.5/325 mg, 1 tablet four times daily, at his initial office visit to 10/325 mg, 1 tablet four times daily, one month later based on Patient 5's complaint that his medication was "not holding." In January 2010, Patient 5's dosage was increased to 15 mg of oxycodone, 1 tablet four times daily. Dr. DiFrangia opined that Patient 5 went from 30 mg to 60 mg of oxycodone daily in two months. She further testified that Patient 5 eventually was receiving 150 mg of oxycodone daily, and still reported that his pain was not well controlled.

(f) Regarding Patients 2 and 3, Dr. Basedow failed to develop and/or properly document the development of an individualized treatment plan for the treatment of patients' pain, other than prolonged opiate and/or opioid prescribing.

Dr. DiFrangia testified convincingly that she was unable to locate any indidualized treatment plans for Patients 2 and 3 in the charts. Dr DiFrangia explained what she expected to see in individualized treatment plans for Patients 2 and 3; documentation of prior treatment, prior testing, specialty evaluations, and the patient's level of function. When asked about an individualized treatment plan for Patient 2, Dr. Basedow testified that he ordered an MRI and performed a urine drug screen at Patient 2's initial office visit. Dr. Basedow argued that Patient 3 was referred to him by his orthopedic surgeon and that he was still under the care of a pain management physician in West Virginia.

(g) Regarding Patients 2 through 4, and 7, Dr. Basedow failed to appropriately refer and/or document appropriate referral to specialists for behaviorial health, mental health, chemical dependency, orthopedic and/or pain issues.

Dr. DiFrangia testified convincingly that, upon review of the above-mentioned patients' medical records, she was unable to find any documentation that showed Dr. Basedow made any referrals to specialists. She testified that appropriate referrals should have been made to assist Dr. Basedow in further assessing the patient's pain. Dr. Basedow argued that there were no specialists that came into Ironton on a rotational baisis and that he only could refer his patients to specialists in West Virginia or Kentucky. However, Dr. DiFrangia countered that he should have documented the lack of specialists in the area in their individualized treatment plans.

(h) Regarding Patients 2 and 4, Dr. Basedow failed to appropriately act and/or properly document appropriate action when presented with signs of patient drug abuse and/or diversion.

According to the medical records, Patient 2 lied about medications he was taking at his initial visit, had inconsistent urine drug screens, and took a pain pill from his brother. However, there is no documentation in Patient 2's medical chart that Dr. Basedow counseled him on his inconsistent urine drug screens or referred him to an addiction specialist. Dr. Difrangia state that, based upon these red flags, Patient 2 was at an extremely high risk for an adverse event.

According to the medical records, Patient 4 had an adulterated urine drug screen, inconsistent urine drug screens, and received narcotics from other medical providers. However, there is no documentation in Patient 4's medical chart that Dr. Basedow counseled her on her aberrant behavior or referred her to an addiction specialist. Of note, Patient 4 eventually was diagnosed with opioid dependence, went into detox, and was prescribed Suboxone.

(i) Regarding Patients 2, 4, and 5, Dr. Basedow failed to appropriately evaluate, or document the appropriate evaluation, with respect to possible adverse drug effects, signs of any illegal drug and/or alcohol use or abuse.

According to the medical records, Patient 2 lied about what medications he was taking at the initial visit, had inconsistent urine drug screens, and took a pain pill from his brother. However, there is no documentation in Patient 2's medical chart that Dr. Basedow counseled him on his inconsistent urine drug screens or referred him to an addiction specialist. Dr. DiFrangia stated that, based upon these red flags, Patient 2 was at an extremely high risk for an adverse event.

According to the medical records, Patient 4 had an adulterated urine drug screen, inconsistent urine drug screens, and received narcotics from other medical providers. However, there is no documentation in Patient 4's medical chart that Dr. Basedow counseled her on her aberrant behavior or referred her to an addiction specialist. According to the medical records, Patient 5 was receiving narcotics from other medical providers, had inconsistent urine drug screens, asked for more pain medication, had a drug screen positive for marijuana, missed a pill count, reported stolen medication, and appeared sedated at an office visit. Dr. DiFrangia testified that meaningful drug and alcohol use history was not obtained and that "[n]o drugs, no alcohol use" appear to be the only documentation. Furthermore, there is no documentation in Patient 5's medical chart that Dr. Basedow counseled him on his aberrant behavior or referred him to an addiction specialist.

2. Dr. Basedow treated Patient 1 on a monthly basis from April 2011 through August 2011 and then again in December 2011. However, there is insufficient evidence that Dr. Basedow practiced below the minimum standard of care in his treatment of Patient 1. Dr. DiFrangia's (sic) testified that, in regard to Patient 1, her report is unreliable because she failed to distinguish between the care and treatment provided to Patient 1 by Dr. William Basedow and his wife, Dr. Arlene Basedow.

3. Dr. Basedow treated Patient 6 on a monthly basis from October 2010 through at least June 2011, for a total of 10 visits, and then again in April 2012. However, there is insufficient evidence that Dr. Basedow practiced below the minimum standard of care in his treatment of Patient 6. Dr. DiFrangia's (sic) testified that , in regard to Patient 6, her report is unreliable because she failed to distinguish between the care and treatment provided to Patient 6 by Dr. William Basedow and his wife, Dr. Arlene Basedow.

   May 7, 2015 Report and Recommendation.

CONCLUSIONS OF LAW

The Hearing Examiner made the following conclusions of law:

1. Dr. Basedow's acts, conduct, and/or ommissions pertaining to Patients 2-5 and Patient 7, as set forth in Findings of Fact 1 and 1(a) through 1(i), individually and/or collectively, constitute "[f]ailure to maintain minimal standards applicable to the selection or administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease," as set forth in R.C. 4731.22(B)(22).

2. Dr. Basedow's acts, conduct, and/or omission pertaining to Patients 2-5 and Patients 7-8, as set forth in Findings of Fact 1 and 1(a) through 1(i), individually and/or collectively, constitute "[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as set forth in R.C. 4731.22(B)(6).

3. Dr. Basedow's acts, conduct, and/or omissions pertaining to Patients 2-5 and Patients 7-8, as set forth in Findings of Fact 1 and 1(a) through 1(i), individually and/or collectively, constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as set forth in R.C. 4731.22(B)(20), to wit: Ohio Administrative Code ("Rule") 4731-21-02, Utilizing Prescription Drugs for the Treatment of Intractable Pain. Pursuant to Rule 4731-21-05, a violation of any provision of Rule 4731-21-02 also violates R.C. 4731.22(B)(2) and (B)(6).

May 7, 2015 Report and Recommendation.

STANDARD OF REVIEW

R.C. § 119.12 sets forth the standard of review a common pleas court must follow when reviewing an administrative appeal. R.C. 119.12 provides in pertinent part:

> The court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and such additional evidence as the court has admitted, that the order is supported by reliable, probative and substantial evidence and is in accordance with law.

In *Our Place* the Ohio Supreme Court provided the following definition of reliable, probative and substantial evidence as:

> (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.

Our Place, Inc. v. Ohio Liquor Comm., 63 Ohio St. 3d 570, 571 (1992).

Once the common pleas court has determined that the administrative agency's order is supported by reliable, probative and substantial evidence, the court must then determine whether the order is in accordance with law. See R.C. § 119.12. The reviewing court cannot substitute

its judgment for the agency's decision where there is some evidence supporting the decision. See *Harris v. Lewis*, 69 Ohio St. 2d 577, 579 (1982); see also *University of Cincinnati v. Conrad,* 63 Ohio St. 2d 108 (1980).

LAW AND ANALYSIS

Appellant asserts the following three assignments of error:

> First Assignment of Error: The Board Order should be reversed as the Order is not supported by reliable, probative and substantial evidence as the State's expert was neither an expert in family medicine nor predominately practicing in Dr. Basedow's area of medical specialty.
>
> Second Assignment of Error: Appellant was denied substantive due process and violations (sic) of the Ohio and United States Constitutions during the Board's administrative hearing Process.
>
> Third Assignment of Error: the Board Order is not in accordance with law as the record lack's proof beyond the preponderance of evidence that Dr. Basedow violated Board Rules.

In his first assignment of error, Appellant asserts that "the State's expert was neither an expert in family medicine nor predominately practicing in Dr. Basedow's area of medical specialty." October 13, 2015 Appellant Brief. Appellant argues that in his practice he specializes in family medicine, and that Dr. DiFrangia has not routinely practiced in family medicine for over five years. He asserts that Dr. DiFrangia routinely specializes her practice in mental illness and addiction. In addition to the area of practice, Appellant took issue with the fact that Dr. DiFrangia practices in the Cuyahoga Falls, Ohio area and thus, is not familiar with Ironton, Ohio's medical community and culture.

Additionally, Appellant asserts that Dr. DiFrangia completed two expert reports and that the first report was not accepted by the Board. Appellant asserts that the Board refused to provide him Dr DiFrangia's original expert report.

Upon review, the record reflects that Dr. DiFrangia is a Board certified family physician and that she engaged in a family medical practice for over 33 years. Tr. 214-215, 217-219, 223, 227-229, 231, 236, and 239. Also, the record reflects that the Hearing Examiner ruled that Dr. DiFrangia could testify as an expert "[I]n family practice and addictionology." Tr. 243. Moreover, the common pleas court must give due deference to the administrative resolution of evidentiary conflicts and findings of fact. For example, the court must defer to the administrative body, as the fact-finder, since the hearing examiner is the person who actually had the opportunity to observe the demeanor of the witness and weigh his/her credibility.

Thus, the hearing examiner had the opportunity to observe a witness's demeanor and weigh that person's credibility. The hearing examiner in this case heard the evidence, considered the arguments of counsel, and concluded that Dr. DiFrangia was an expert "[I]n family practice and addictionology." Tr. 243. In addition, even if Dr. DiFrangia was not a properly qualified expert, the Board can rely on its own expertise in reviewing Appellant's case. *Arlen v. State, Medical Board,* 61 Ohio St. 2d 168 (1980).

Appellant does not provide any legal authority regarding his argument that there is a "geographical" requirement for expert medical testimony in Ohio. Appellant does not set forth the alleged parameters of these geographical limits as to whether they are by some delineated region, by county, etc. Appellant's contention that there are different standards of minimal medical care throughout the state of Ohio is unfounded.

Regarding Appellant's argument that there were two expert reports and that he did not receive the original report, the Hearing Examiner addressed that issue during the hearing. Tr. 293-301. The Hearing Examiner concluded that Appellant's attorney did not comply with O.A.C. 4731-13-18(E). Tr. 301. O.A.C. 4731-13-18(E) provides"

> A party shall notify the hearing examiner of any deficiency in the materials provided by the other party within a reasonable period of time after discovery of the deficiency.

Accordingly, Appellant's first assignment of error is not well-taken and is hereby **OVERRULED**.

In his second assignment of error, Appellant asserts that he was denied substantive due process and that there were "violations of the Ohio and United States Constitutions during the Board's administrative hearing process." October 13, 2015 Appellant's Brief. Appellant's brief fails to cite to the specific sections/articles of the Ohio and/or United States Constitutions that allegedly were violated, and merely asserts general allegations. In his brief, Appellant takes issue with the Hearing Examiner's questions posed to him during the hearing. However, a review of the record demonstrates that Appellant's counsel never objected to these questions, and only raised one objection wherein Appellant was able to refer to a document. Tr. 800.

The phrase "due process" expresses the requirement of "fundamental fairness." In defining the process necessary to ensure "fundamental fairness," the United States Supreme Court has recognized that the clause does not require that the procedures used to guard against an erroneous deprivation be so comprehensive as to preclude any possibility of error, and in addition, the Supreme Court has emphasized that the marginal gains from affording an additional procedural safeguard may be outweighed by the societal cost of providing such a safeguard. Thus, an appellant must make a showing of "identifiable prejudice." See *Ghassan Haj-Hamed v. State Medical Board*, 2007 Ohio App. LEXIS 2335.

Upon review, Appellant has not made a showing of identifiable prejudice. The record demonstrates that once the Appellant was placed on notice, he was given the opportunity to request a hearing. The record reflects that Appellant was represented by counsel, and had an opportunity to

be heard in a hearing that was held over several days, on January 5 and 6, 2015, and February 2 and 3, 2015.

Clearly, there is no issue regarding procedural due process because the record reflects that Appellant had notice and an opportunity to be heard. Upon review, the record reflects that the Hearing Examiner's questions of Appellant were proper, and that she acted impartially and did not exceed her authority. *Staschak v. State Medical Bd. of Ohio*, 2004-Ohio-4650; O.A.C. 4731-13-03. Appellant has not provided any legal authority to support his argument or to legally challenge O.A.C. 4731-13-03, and has not demonstrated an identifiable prejudice.

Moreover, a review of the record demonstrates that Appellant's counsel did not object to the questions the Hearing Examiner posed to Appellant. Tr. 796-845. During the entire dialogue between Appellant and the Hearing Examiner, Appellant's counsel only voiced one objection, which appears to be in reference to Appellant being able to refer to a patient's medical chart, and had nothing to do with the context of the Hearing Examiner's question. Tr. 800.

Accordingly, Appellant's second assignment of error is not well-taken and is hereby **OVERRULED**.

In his third assignment of error, Appellant asserts that the Board's Order is not in accordance with law because the record lacks proof "beyond a preponderance of evidence" that Appellant violated Board Rules. October 13, 2015 Appellant Brief. Appellant asserts that the Board incorrectly concluded that he ignored "red flags" regarding patient compliance issues. He argues that his patients' medical records include patient contracts, referrals to addictionologists, use of physical therapies, and orders for patients to obtain urine screens. Appellant submits that the Board failed to give the mitigating evidence of his reformed practice the weight it deserved.

Upon review, the Appellant asserts the wrong standard of proof. The record demonstrates by a preponderance of the evidence that Appellant was prescribing Oxycontin, MS Contin, Percocet and Oxycodone. Tr. 12-15, 21-27, 32-35, 41-45, 48-53, 56-65. Appellant was also prescribing Xanax, in addition to these narcotics, which created a potentially dangerous mix. Tr. 279. The record demonstrates that the side effects of this combination of drugs would be especially dangerous during sleep and could cause addiction, decreased alertness, and suppression of breathing. Appellant was prescribing these medications without obtaining and reviewing a patient's prior medical records. Tr. 277.

The Hearing Examiner found that for Patients 2-5 and 7-8, Appellant violated the standard of care and the Board's rules for treating intractable pain. The Hearing Examiner found that Appellant routinely prescribed narcotics to his patients at the initial office visit, based on their subjective complaints, and not based upon his review of their prior medical records or the objective results of medical testing. The record reflects that Appellant often increased dosages of narcotic medications without documenting an explanation, and made no referrals to specialists. The record reflects that he failed to document individualized treatment plans, and often ignored or failed to document incidents that his patients were exhibiting signs of diversion, addiction and/or drug abuse. May 7, 2015 Report and Recommendation, p. 83. The Hearing Examiner's findings of fact and conclusions of law were adopted, as modified, by the Board. June 10, 2015 Entry of Order.

Contrary to Appellant's assertion, the Hearing Examiner did consider mitigating evidence in Appellant's favor. May 7, 2015 Report and Recommendation, p. 84. In her report, the Hearing Examiner recommended an indefinite suspension, but not less than 180 days, permanent limitations and restriction, conditions for reinstatement or restoration, terms, conditions and limitations for a period of probation of at least three years, and reporting requirements, among other things. The

Board members modified that recommendation and likewise, when considering the mitigating evidence, decreased Appellant's term of suspension from 180 days, as recommended by the Hearing Examiner, to a suspension for an indefinite period of time, but not less than 90 days. Among other things, the Board also limited Appellant's license by adding a provision barring him from prescribing narcotic analgesic medications in the future. June 10, 2015 Entry of Order. For Appellant to argue that the Board did not consider the mitigating evidence is disingenuous, because the record overwhelmingly supports that the Hearing Examiner and the Board *did* consider the mitigating evidence, and based on that evidence, the Board imposed a lesser penalty than the penalty proposed by the Hearing Examiner.

Thus, Appellant's third assignment of error is not well-taken and is hereby **OVERRULED.**

DECISION

This Court concludes as a matter of law that the June 10, 2015 Entry of Order of the State Medical Board of Ohio is supported by reliable, probative and substantial evidence and is in accordance with law. Accordingly, this Court hereby **AFFIRMS** the June 10, 2015 Entry of Order.

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. Pursuant to Civil Rule 58, the Clerk of Court shall serve upon all parties notice of this judgment and its date of entry.

It is so ordered.

Franklin County Court of Common Pleas

Date:	01-05-2016
Case Title:	WILLIAM K BASEDOW DO -VS- OHIO STATE MEDICAL BOARD
Case Number:	15CV005733
Type:	ENTRY

It Is So Ordered.

/s/ Judge Kimberly Cocroft

Court Disposition

Case Number: 15CV005733

Case Style: WILLIAM K BASEDOW DO -VS- OHIO STATE MEDICAL BOARD

Case Terminated: 10 - Magistrate