

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Faith E. Alvarez
Alvarez Legal, LLC
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Courtney Staton
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Donald R. Walker,
Appellant-Petitioner,

v.

Indiana State Board of Dentistry,
Appellee-Respondent.

September 28, 2023

Court of Appeals Case No.
23A-PL-1122

Appeal from the Marion Superior
Court

The Honorable Patrick J. Dietrick,
Judge

Trial Court Cause No.
49D12-1910-PL-42981

Memorandum Decision by Judge Bailey
Judges May and Bradford concur.

Bailey, Judge.

Case Summary

- [1] Donald Walker, D.D.S., appeals the trial court’s denial of his petition for judicial review following a decision by the State Board of Dentistry (“the Board”) to revoke his license. We affirm.

Issues

- [2] Walker purports to raise three issues for our review. However, Walker has waived all but one of them for failing to raise them to the trial court. Thus, we address the sole remaining issue of whether there was sufficient evidence to support the Board’s determination that he had committed fraud or material deception.

Facts and Procedural History

- [3] Walker obtained a license to practice dentistry in 1972, and he specialized in oral surgery. On April 6, 2012, J.K. (“Patient”) sought treatment from Walker for a broken jaw following a fight. Walker performed surgery on Patient’s jaw the same day, and Debra Revolt assisted Walker. Thereafter, on March 21, 2013, Patient filed a complaint with the Indiana Department of Insurance alleging that Walker had been “negligent” in his care and treatment of Patient’s injuries. Appellant’s App. Vol. 3 at 50. Patient further alleged that, as a result of Walker’s actions, he had to undergo another surgery, has “required

orthodontic braces,” has “suffered severe pain and suffering and emotional trauma,” and “has incurred and continues to incur medical bills[.]” *Id.* at 51.

[4] Patient’s complaint was reviewed by the medical review panel, and, on April 14, 2017, the medical review panel determined that “the evidence does not support the conclusion that [Walker] failed to meet the applicable standard of care” and that his conduct “was not a factor of the resultant damages.” *Id.* at 53. Thereafter, Patient agreed to dismiss “this matter” with prejudice, and he agreed that “no lawsuit will be pursued in any Court of Law.” *Id.* at 61.

[5] At some point prior to June 2017, Patient filed a consumer complaint with the Office of the Indiana Attorney General (“OAG”).¹ OAG Investigator Amber Cordova initially investigated the complaint. During her investigation, Cordova requested Patient’s records from Walker as well as records related to the malpractice case. Cordova received some records, but she did not receive a copy of the Surgery and Anesthesia Record for Patient’s 2012 jaw surgery. In June 2017, OAG case analyst Rebekah Legg took over the investigation into Patient’s consumer complaint. Legg did not believe that she had Patient’s “full” dental record, so she consulted a liaison. Appellee’s App. Vol. 2 at 18.

¹ We agree with the State that the date on which Patient filed the complaint is unknown. While Walker asserts that “the evidence in the record consistently states that [Patient’s] complaint was filed on January 26, 2018,” Reply Br. at 10 n.1, the record only indicates that the OAG filed its first administrative complaint against Walker on that date, not that Patient filed his consumer complaint then. *See* Appellant’s App. Vol. 2 at 6, 15, 52, 89, 95, 212. Further, neither party has provided a copy of Patient’s consumer complaint in their respective appendices. But it is clear from the record that Patient filed his consumer complaint sometime prior to June of 2017. *See* Appellee’s App. Vol. 2 at 15 (testimony from an OAG case analyst stating that she took over investigating the complaint in June 2017).

The liaison opined that Walker's records were "inadequate." *Id.* at 20. Legg then subpoenaed Walker's records.

[6] On January 26, 2018, the OAG filed its first amended complaint against Walker in Cause Number 2018 ISBD 003. In that complaint, the OAG alleged that Walker had failed to maintain proper dental records in violation of an administrative code and that the violation subjected Walker to disciplinary action.² In June or July 2018, Walker asked Carisa Bregitzer, an employee of Walker's at the time, "for a blank anesthesia record." Appellant's App. Vol. 2 at 116. Walker filled out the form with information related to Patient's April 2012 surgery and asked Bregitzer to fax it to the OAG. Legg ultimately received a copy of the Surgery and Anesthesia Record on July 30. That record was dated April 6, 2012, and identified Yolanda Corson, an employee of Walker's from 1998 through 2017, as the assistant who was present during the procedure. *See* Appellant's App. Vol. 3 at 70.

[7] Thereafter, on September 18, Corson filed a consumer complaint with the OAG. Corson alleged that Walker had recently reached out to her and asked her to verify that Patient's records, including the Surgery and Anesthesia Record, were correct. Corson then stated that the "sedation/anesthesia sheet" was not "true and factual," that it had not been in Patient's records during the

² That complaint was amended shortly thereafter to include allegations about a different patient. Those allegations are not related to this appeal.

time she worked there, and that Walker filled it out after she left but backdated it to April 6, 2012. Appellant's App. Vol. 3 at 66.

[8] On October 5, the Board held a hearing on the first complaint in order to determine whether Walker's records were adequate. During that hearing, Legg testified that she did not receive the Surgery and Anesthesia Report until July 2018 despite numerous requests and opportunities for Walker to provide that document. Walker testified that the record was authentic and had been created on the day of Patient's surgery. Following the hearing, the Board suspended Walker's license.

[9] In October or November, Walker contacted Bregitzer via phone and asked her if the "Appointment Scheduler records" indicated that Corson had been on vacation the week of Patient's surgery. Appellant's App. Vol. 3 at 79. Bregitzer answered in the affirmative, and Walker "instructed" Bregitzer to "delete" those records. *Id.* Bregitzer recorded that phone call. Bregitzer informed a representative of the OAG about the conversation with Walker and provided a copy of the phone recording. On November 16, the OAG subpoenaed Walker's staffing calendar as it related to Corson's schedule from April 2 through April 9, 2012. Walker responded and stated that he had performed a "diligent search" of his records but found that "[n]o records responsive to" the subpoena "exist" and that no such records have "ever existed." Appellant's App. Vol. 2 at 8.

[10] On January 29, 2019, the OAG filed a second complaint against Walker in Cause Number 2019 ISBD 0001. In that complaint, the OAG alleged: 1) that Walker had fabricated the Surgery and Anesthesia Record “in an effort to create a defense” against the first administrative complaint, which amounted to “fraud or material deception in order to obtain a license” in violation of Indiana Code Section 25-1-9-4(a)(1)(A); 2) that Walker had falsely attested to the authenticity of the Surgery and Anesthesia Record, which amounted to “fraud or material deception in order to obtain a license” in violation of Indiana Code Section 25-1-9-4(a)(1)(A); 3) that Walker’s conduct in fabricating the Surgery and Anesthesia Record amounted to fraud or material deception in the course of professional activities in violation of Indiana Code Section 25-1-9-4(a)(1)(B); 4) that Walker’s conduct in “ordering an employee to delete records in an effort to cover up his fabrication” amounted to fraud or material deception in the course of professional activities in violation of Indiana Code Section 25-1-9-4(a)(1)(B); and 5) that Walker’s conduct in submitting a “false affidavit to a public servant” constituted fraud or material deception in the course of professional activities in violation of Indiana Code Section 25-1-9-4(a)(1)(B).

[11] The Board held a hearing on the Second Administrative Complaint on August 2. During the hearing, Bregitzer testified as to Walker’s actions creating the Surgery and Anesthesia Record in the summer of 2018 and his request that fall for her to delete the schedule for the week of Patient’s surgery. Following the hearing, the Board issued its findings of fact and conclusions thereon in which it

found that Walker had violated the statutes as alleged. As a result, the Board revoked Walker's license.

[12] Walker filed a petition for judicial review with the trial court. In that petition, Walker alleged that his due process rights were violated because a member of the Board had a "personal animus" against him, that the Board's decision was not "based on substantial evidence," and that the Board's punishment was "wholly disproportionate to the offense." Appellant's App. Vol. 2 at 23-24. In his brief in support of his petition, Walker again asserted that the Board's finding regarding fraud "is not based on substantial evidence" in that the "Board ignored direct evidence from a witness who observed the creation of" the Surgery and Anesthesia Report. Appellant's App. Vol. 3 at 21. And he argued that the revocation of his license was "disproportionate to the offense and out of line with [his] years of distinguished service." *Id.* at 22-23.

[13] On April 18, 2023, the trial court issued its findings of fact and conclusions thereon denying Walker's petition for judicial review. Specifically, the trial court found that there was sufficient evidence for the Board to determine that Walker had kept fraudulent records and that the Board's sanction was not arbitrary, capricious, or an abuse of discretion. This appeal ensued.

Discussion and Decision

[14] Walker contends that the trial court erred when it denied his petition for judicial review of the Board's determination. As this Court has previously stated:

In an appeal involving a decision of an administrative agency, our standard of review is governed by the Administrative Orders and Procedures Act (“AOPA”), and we are bound by the same standard of review as the trial court. We do not try the case de novo and do not substitute our judgment for that of the agency. We will reverse the administrative decision only if it is: (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to a constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; or (5) unsupported by substantial evidence.

Courts that review administrative determinations are prohibited from reweighing the evidence or judging the credibility of witnesses and must accept the facts as found by the administrative body. A court may not substitute its judgment for that of the agency. Additionally, a court may not overturn an administrative determination merely because it would have reached a different result. . . . The burden of demonstrating the invalidity of the agency action is on the party who asserts the invalidity.

Walker v. State Bd. of Dentistry, 5 N.E. 3d 445, 448-49 (Ind. Ct. App. 2014)
(citations omitted).

[15] Here, Walker purports to raise three issues on appeal: 1) whether Patient’s and Corson’s consumer complaints are valid and can serve as bases for the Board’s determination; 2) whether one of the statutes relied on by the OAG and the Board applies only to individuals seeking a license, not individuals who have already obtained a license, such that that statute does not apply to him and cannot serve as a basis for a violation; and 3) whether there was sufficient

evidence to support the Board's findings that he had committed fraud or misconduct.

[16] However, Walker did not raise either of the first two purported issues to the trial court. Indeed, the only issues Walker raised to the trial court in his petition for judicial review included whether the Board had violated his due process rights, whether there was sufficient evidence to support the findings of misconduct, and whether his sanction was disproportionate to the offense. Because Walker did not raise any issue to the trial court regarding either consumer complaint or the applicability of a statute to him, he has waived those issues for our review. *See Walker*, 5 N.E.3d at 450 n.2 (finding that Walker had waived an argument for having failed to raise it to the trial court). Thus, we turn to Walker's only preserved issue for our review: whether there was sufficient evidence to support the Board's determination.

[17] On appeal, Walker contends that there was insufficient evidence to demonstrate that he had committed fraud. Again, the OAG alleged and the Board found that Walker had committed five violations of Indiana Code Section 25-1-9-4, two of subsection (a)(1)(A) and three of subsection (a)(1)(B). That statute provides, in relevant part:

(a) A practitioner shall conduct the practitioner's practice in accordance with the standards established by the board regulating the profession in question and is subject to the exercise of the disciplinary sanctions under section 9 of this chapter if, after a hearing, the board finds:

(1) a practitioner has:

(A) engaged in or knowingly cooperated in fraud or material deception in order to obtain a license to practice, including cheating on a licensing examination; [or]

(B) engaged in fraud or material deception in the court of professional services in a false or misleading matter[.]

Ind. Code § 25-1-9-4(a)(1) (2022).

[18] Following a hearing, the Board ultimately found that Walker had engaged in “fraud or material deception” under subsection (a)(1)(A) by “fabricating” the Surgery and Anesthesia Record and by “attesting” to the record’s authenticity at the October 5, 2018, hearing on the OAG’s first administrative complaint. Appellant’s App. Vol. 2 at 17-18. The Board also ultimately found that Walker had engaged in “fraud or material deception” under subsection (a)(1)(B) by “fabricating” the Surgery and Anesthesia Record, by “ordering an employee to delete records,” and by “submitting a false affidavit” to the OAG’s office. *Id.* at 18. On appeal, Walker contends that there was insufficient evidence to show that he had committed fraud because “there is no evidence of any reliance upon Dr. Walker’s alleged deceptive acts” and because Dr. Walker’s recordkeeping was not the proximate cause of any injury. Appellant’s Br. at 25, 27.

[19] However, as stated above, the Board found that Walker had committed fraud “or material deception” for all five allegations. Appellant’s App. Vol. 2 at 17-

18. Walker only contends that his actions did not amount to fraud; he makes no argument as to whether his actions amounted to material deception. And we hold that there was ample evidence to show that they did. Indeed, after Patient filed his consumer complaint, the OAG's office began an investigation into Walker's record keeping. In response, Walker sent the OAG's office some records, but did not send the Surgery and Anesthesia Report. Then, when the second investigator took over in 2017, she again determined that Walker's records were not complete. As a result, in 2018, the OAG filed its first administrative complaint against Walker for having failed to maintain adequate records.

[20] The evidence also demonstrates that, in June or July 2018, months after the OAG had filed its complaint and years after Patient's surgery, Walker contacted Bregitzer, asked for a blank Surgery and Anesthesia Record, filled it out with information related to Patient's surgery, backdated it to April 2012, and had Bregitzer fax it to the OAG's office. That record identified Corson as the assistant despite the fact that Corson was on vacation the week of Patient's surgery. Further, the evidence shows that, during the Board's hearing on the OAG's first administrative complaint, Walker falsely testified that he had created the Surgery and Anesthesia Record on the day of the surgery. Then, after the Board's hearing on the OAG's first complaint, Walker again contacted Bregitzer and asked her to delete the schedule records that showed Corson was on vacation during the week of Patient's surgery. And the evidence

demonstrates that, when the OAG subpoenaed Walker's staffing calendar, Walker responded and affirmed that no such records had ever existed.

[21] In other words, based on the evidence, a reasonable factfinder could conclude that, after the OAG had filed its first administrative complaint, Walker fabricated records pertaining to Patient's 2012 surgery and then lied about it at the Board hearing. A reasonable fact-finder could also conclude that, after his license was suspended, Walker took further action to ask an employee to delete scheduling records that contradicted his fabricated Surgery and Anesthesia Record and then falsely informed the OAG that the schedule had never existed. The evidence clearly supports the Board's ultimate finding that Walker had committed several actions that amounted to material deception.

[22] Still, Walker also contends that there was no evidence to support the Board's finding of fraud or material deception because it is undisputed that he "performed the surgery" and, because the surgery occurred, "a record of the surgery is still truth." Appellant's Br. at 28. However, the question is not whether the surgery occurred. The relevant question is whether Walker committed fraud or material deception when he: 1) created the Surgery and Anesthesia Record years after Patient's surgery in response to the first OAG complaint, 2) falsely testified at the first hearing that he had created the record at the time of Patient's surgery, 3) instructed an employee to delete the records of the staff schedules to cover up the fact that Corson was not at the surgery despite being named as the assistant in the late-created record, and 4) submitted

an affidavit to the OAG's office with knowingly false information. And, as discussed above, there is sufficient evidence to support the Board's decision.

Conclusion

[23] Walker has waived review of two of his three purported issues for having failed to raise them to the trial court. And the evidence is sufficient to show that Walker committed fraud or material deception. We therefore affirm the trial court's denial of Walker's petition for judicial review.

[24] Affirmed.

May, J., and Bradford, J., concur.