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Kyros v. Rhode Island Dep't of Health, 253 A.3d 897 (R.I. 2021)

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Administrative Law. *Kyros v. Rhode Island Dep't of Health*, 253 A.3d 897 (R.I. 2021). The Rhode Island Department of Health Board of Medical Licensure and Discipline must present findings of fact to support their decisions when issuing a final sanction. If the agency fails to do so, the trial justice may set aside the decision as arbitrary or capricious. Further, a trial justice may refrain from remanding a case back to an agency when doing so would not be in the interest of justice and would not provide new information.

FACTS AND TRAVEL

In August of 2009, plaintiff, William Kyros (Dr. Kyros), entered into an Agreement to Cease Practice (Agreement) with the Rhode Island Department of Health Board of Medical Licensure and Discipline (Board) because the Board had received notice that Dr. Kyros “engaged in unprofessional conduct by engaging in serious professional boundary violations with patients.”¹ The Agreement required Dr. Kyros to:

[C]ease practicing any branch of medicine[,] . . . go for an evaluation at the Sante Center for healing, . . . [t]he evaluation report must be sent directly to the Board [, and *that t]he board will make a determination on final sanctions after it reviews and considers the evaluation report from the Sante Center for healing.*²

Dr. Kyros acted in accordance with the Agreement and attended the Sante Center (Center) from August 17 – 20, 2009.³ The Center produced a fifty-four-page report that recommended “Dr. Kyros should not return to the unrestricted practice of medicine through direct psychiatric care”, at the appropriate time he should return to supervised practice, and that Dr. Kyros should successfully complete

1. *Kyros v. Rhode Island Dep't of Health*, 253 A.3d 897, 881 (R.I. 2021).

2. *Id.* By signing the agreement Dr. Kyros waved his right to a hearing and possible disciplinary action if the agreement is violated. *Id.*

3. *Id.*

an education course on maintaining proper boundaries.⁴ The report was received by the Board on September 25, 2009.⁵

Subsequently, Dr. Kyros contacted the board seeking guidance on what he needed to do next, but he received no response.⁶ As a result, on his own accord, Dr. Kyros “began treating with Edward Brown, M.D., and Gene Jacobs, O.D.”⁷ Additionally, in September 2010 Dr. Kyros completed the recommended course in Medical Ethics, Boundaries & Professionalism.⁸

On June 10, 2013, Dr. Kyros reached out to the Board again to discuss his next steps and included a report from Dr. Jacobs’ detailed treatment and diagnosis, which concluded that Dr. Kyros no longer needed psychiatric follow up care and Dr. Jacobs believed there was “no reason why Dr. Kyros cannot restart clinical practice.”⁹

After submitting the report, Dr. Kyros met with James McDonald M.D., the chief administrative officer of the Board.¹⁰ At which point, Dr. Kyros was told by Dr. McDonald to, “engage with the chairperson of the Physicians Health Committee of the Rhode Island Medical Society.”¹¹ Dr. Kyros complied, and in August 2013, Dr. Kyros met with Chairperson Herbert Rakatansky, M.D.¹² Chairperson Rakatansky instructed Dr. Kyros to “undergo a forensic psychiatric evaluation.”¹³ Dr. Kyros again complied and underwent the evaluation by Daniel Harrop, M.D., who then submitted the final report from the evaluation to chairperson Rakatansky.¹⁴ The report concluded that Dr. Kyros was fit to have his license returned for unrestricted practice.¹⁵ On September 9, 2013

4. *Id.* The report outlined the plaintiff’s personal history, evaluations by several health care professionals, the results of two polygraph examinations, and a preliminary recommendation. The report did not address Dr. Kyros’ skill and competence because that was beyond the scope of the assessment. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.* at 882.

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

Chairperson Rakatansky contacted Dr. McDonald and notified him of the results.¹⁶

On December 4, 2013, Dr. Kyros was officially issued a preliminary finding of “unprofessional conduct” by the Board.¹⁷ Dr. Kyros met with Dr. McDonald in January of 2014 to discuss “a potential resolution to the charge of unprofessional conduct” but they failed to reach an agreement because Dr. Kyros opposed supervision and probation.¹⁸ Dr. Kyros failed to attend the formal hearing due to “financial circumstances.”¹⁹

For the next two years, with the aid of new counsel, Dr. Kyros engaged in discovery to prepare for an eventual hearing before the Board.²⁰ The parties met during that time on several occasions to discuss a settlement, but failed to reach an agreement.²¹ As a result, in March 2017, Dr. Kyros requested a formal hearing before the Board “regarding his fitness to return to the practice of medicine as contemplated in the” Agreement.²² Additionally, Dr. Kyros submitted a “reinstatement application” to the Board.²³ However, after delays due to the complexity of the application, the licensing committee voted to “require Dr. Kyros to ‘attend the Sant[e] Center for a re-evaluation’ ... [and]... ‘to attend the Center for Personalized Education for Physicians (CPEP) to assess his clinical competency to practice.’”²⁴

On September 18, 2017, Dr. Kyros made another request for a formal hearing.²⁵ Dr. McDonald invited Dr. Kyros to appear before the licensing committee again, but Dr. Kyros declined to re-appear and voiced his objections to the prior requirements from the committee because he felt “it was unnecessary given the extensive

16. *Id.* Chairperson Rakatansky noted there was no reason to doubt the conclusions reached by Dr. Jacobs and Dr. Harrop. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.* at 882–83.

25. *Id.* at 883.

treatment he had undergone.”²⁶ The Committee denied Dr. Kyros’ licensure application on October 10, 2017.²⁷

In November of 2017, “[a] one-count specification of charges was issued against Dr. Kyros” alleging he engaged in unprofessional conduct in violation of G.L. §5-37-5.1.²⁸ An evidentiary hearing was conducted, and the Board issued a ten page decision dated November 14, 2018 that outlined four findings of fact.²⁹ First, there was no finding that Dr. Kyros engaged in unprofessional conduct and second, Dr. Kyros was ordered to attend the CPEP and complete a competency assessment program prior to re-entering practice.³⁰

Dr. Kyros filed a timely notice of appeal to the Superior Court alleging the usual grounds for administrative appeal, which include:

[T]he decision was (1) in violation of constitutional, statutory, or ordinance provisions; (2) in excess of the Board’s and DOH’s Authority; (3) made upon unlawful procedure; (4) affected by other error of law; (5) Clearly erroneous; and (6) arbitrary or capricious or characterized by abuse of discretion.³¹

The trial justice, on December 13, 2019, reversed the Board’s decision.³² The Superior Court held that the Board arbitrarily found Dr. Kyros clinically incompetent solely on the grounds that he had not clinically practiced in nine-years.³³ Additionally, the Superior Court stated “[a]lthough the court would typically be

26. *Id.*

27. *Id.*

28. *Id.* This section outlines thirty-one items that may constitute unprofessional misconduct. Dr. Kyros is charged with violating number 24, which states conduct qualifies as unprofessional conduct as “[v]iolating any provision . . . of this chapter or the rules and regulations of the board or any rules or regulations promulgated by the director or of an action, stipulation, or agreement of the board[.]” 5 R.I. GEN. LAWS ANN. § 5-37-5.1 (24) (West).

29. The hearing included presentation of documentary and testimonial evidence. *Id.*

30. *Id.*

31. *Id.* The Court is allowed to reverse or modify the agencies decision if any one of these six objections are satisfied. 42 R.I. GEN. LAWS ANN. § 42-35-15(g) (West).

32. Kyros, 253 A.3d at 884.

33. *Id.*

inclined to remand this case to RIDOH for further proceedings—with respect to inadequate findings of fact—here, the [c]ourt finds that doing so would only cause more harm and opportunity for delay after a nearly decade-long saga.”³⁴ The Supreme Court of Rhode Island granted the defendants’ petition for writ of certiorari on the arguments, that the Boards decision was not arbitrary or capricious and the trial court erred in not remanding the case to the Board for further proceedings.³⁵

ANALYSIS AND HOLDING

The defendants asserted two claims of error by the Superior Court.³⁶ First, they argued the trial justice erred in finding that the Board’s decision was arbitrary, capricious, and not supported by evidence of competence.³⁷ Second, the defendants argued that the trial justice erred in declining to remand the case to the Board for further proceedings.³⁸

A. *Arbitrary and Capricious*

The Board is required to “prepare written findings of fact and law” to support their decisions, and if they fail to do so, the Court may, “pursuant to §43-35-15(g), find the decision erroneous and unsupported by evidence, or arbitrary or capricious.”³⁹ One of the disputes in this case was which document was controlling.⁴⁰ The DOH argued that the controlling document to support the sanctioned “CPEP requirement was made pursuant to the Agreement [to Cease Practice],” and not the charge.⁴¹ However, the Court ruled that the controlling document in this case was the specification of charges issued, and because the charge was not sustained no disciplinary action was imposed.⁴²

34. *Id.*

35. *Id.* at 885, 887.

36. *Id.*

37. *Id.* at 885.

38. *Id.* at 887.

39. *Id.* at 887 (citing *Sakonnet Rogers, Inc. v. Coastal Resources Management Council*, 536 A.2d 893, 896 (R.I. 1988)).

40. *Id.* at 885.

41. *Id.*

42. *Id.*

The Court highlighted three problems with the DOH's argument.⁴³ First, the Board made no findings that Dr. Kyros violated the terms of the Agreement.⁴⁴ To the contrary, the Court concluded that Dr. Kyros attempted to fulfill all his obligations under the Agreement.⁴⁵ Moreover, the Court stated that the Board neglected its obligation for nine years to impose final sanctions under the Agreement and concluded that the Board "ultimately imposed none."⁴⁶

Second, the Court stated, "the record was devoid of any evidence that Dr. Kyros was not clinically competent to practice medicine."⁴⁷ The defendants argued the nine year lapse "speaks for itself relative to the question of clinical competence."⁴⁸ The Court reasoned that the defendant's assumption "ignores the reliable and probative evidence in the record,"⁴⁹ and thus concluded the DOH "failed to present any evidence and made no findings" of fact to support the CPEP requirement.⁵⁰

Third, the Court stated the requirement was outside the scope of the Agreement because the Agreement was silent on the question of clinical competency.⁵¹ Part of the Agreement was that the Board would "take into consideration the Sante Center's report when determining any licensing and discipline issues."⁵² However, skill and competence was beyond the scope of the assessment and the Court concluded that reliance on the report would be misplaced if used to impose the CPEP requirement.⁵³ Therefore, the Court affirmed the Superior Courts ruling, which reversed the board's decision as arbitrary and capricious.⁵⁴

43. *Id.* at 885–86.

44. *Id.*

45. *Id.*

46. *Id.* at 886.

47. *Id.*

48. *Id.* at 887.

49. *Id.*

50. *Id.* at 886.

51. *Id.*

52. *Id.* at 885.

53. *Id.* at 886.

54. *Id.* at 887.

B. Declining to Remand

“Parties who are subject to administrative proceedings have the right to an expeditious agency decision and judicial decision.”⁵⁵ The defendants argued the trial justice erred in failing to remand the case to the Board because “the protection of the health and safety of the public ‘outweigh[s] the concern for prejudice of [Dr. Kyros’s] right to a final adjudication within a reasonable period.’”⁵⁶ However, the Supreme Court disagreed, concluding that a remand to an administrative agency may not be appropriate where it would not further the interest of justice or provide new information.⁵⁷

The Supreme Court affirmed the trial justice’s decision in declining to remand for three reasons.⁵⁸ First, the Court highlighted that Dr. Kyros voluntarily ceased practicing medicine for more than nine years.⁵⁹ Second, the Court found that continuing the delay would not further the interest of justice.⁶⁰ Lastly, the Court believed that remanding the matter back to the Board would not produce new information because “there is no evidentiary support in the record that Dr. Kyros is not clinically competent.”⁶¹

C. Dissent

Justice Robinson dissented from the majority’s opinion on two grounds.⁶² First, Justice Robinson believed the Agreement was the controlling document in this case.⁶³ Justice Robinson noted that the Agreement was signed by both parties, the Agreement did not contain any time provision, and because the Agreement allows the Board to determine final sanctions, it was within their power to require a CEPD competency assessment.⁶⁴ Thus, he concluded it was

55. *Id.*

56. *Id.*

57. *Id.* (citing *Champlin’s Realty Associates v. Tikoian*, 989 A.2d 427, 449 (R.I. 2010)).

58. *Id.* at 888.

59. *Id.* at 887.

60. *Id.*

61. *Id.* at 888.

62. *Id.* (Robinson, J., dissenting).

63. *Id.*

64. *Id.* at 889.

an error for the trial justice to reverse the Boards decision to issue a final sanction.⁶⁵

Second, Justice Robinson believed it was the responsibility of the board, “to see to it that the public is properly protected when the Board is dealing with a doctor who ... had not practiced medicine in approximately nine years.”⁶⁶ Justice Robinson noted that Dr. Kyros has not practiced medicine for twelve years now and “twelve years away from any profession would likely affect one’s competency and skill.”⁶⁷ Therefore, Justice Robinson concluded, “that fact alone serves to show that the Boards decision was not arbitrary and capricious.”⁶⁸

COMMENTARY

In the case at hand, the Rhode Island Supreme Court acknowledged the necessity for agencies to establish all necessary findings of fact before issuing a final decision.⁶⁹ As such, the Court spent ample time in discussing all the areas in which the Board failed to meet the required burden of making some findings of fact to support their decision.⁷⁰ First, the Court stated that “the Boards decision overlooked, and indeed ignored, the specification of charges . . . [and that] the Board never made a finding that Dr. Kyros was guilty of unprofessional conduct.”⁷¹ Second, the Court stated that “[t]he Board made no finding that Dr. Kyros violated the terms of the Agreement.”⁷² Third, the “Board made no findings about Dr. Kyros’ clinical competency.”⁷³ This case follows the long-standing rule that an agency must prepare some written findings of fact and law to support their conclusions and decisions, and if they fail to do so, the decision may be found arbitrary or capricious.⁷⁴

Additionally, The Rhode Island Supreme Court acknowledged that it is within the trial courts power to make a final ruling on an

65. *Id.* at 889–90.

66. *Id.* at 888–89.

67. *Id.* at 890.

68. *Id.*

69. *Id.* at 885–887 (majority opinion).

70. *Id.*

71. *Id.* at 885.

72. *Id.*

73. *Id.* at 886.

74. *Id.* at 887; 42 R.I. GEN. LAWS ANN. § 42-35-159(g) (West).

agencies decision and choose to not remand the case back to the agency.⁷⁵ The trial court may choose to do so when remanding would not further the interest of justice or fail to provide new information.⁷⁶ The Court did not address whether both items must be met as a factor test or whether the interests are balanced because in this case the Court believed both were met.

Justice Robinson, dissenting, made two convincing arguments. Justice Robinson argued that the controlling document in the case should be the Agreement to Cease Practice.⁷⁷ He believed the agreement should be the controlling document because both parties signed the contract, the contract did not have a time provision, and a provision of the contract allowed the Board to issue a final sanction.⁷⁸ Based on general contract principles, this seems to be a sound argument.

Second, Justice Robinson pointed to language from the Rhode Island Code of Regulations pertaining to the DOH, which states, “If a physician has not engaged in the active practice of medicine for two (2) years or more . . . [t]he Board may establish clinical competency [through] [a]n evaluation of clinical competency by a Board approved organization, such as the Center for Personalized Education for Physicians.”⁷⁹ As Justice Robinson points out, because of the date of enactment the regulation does not apply to this case.⁸⁰ However, the language should be noted because the Board can now require, under statute, a physician to establish clinical competency through the CPEP after being removed from practice for just two years.⁸¹

CONCLUSION

The Rhode Island Supreme Court affirmed the trial court’s decision to reverse the Rhode Island Department of Health Board of Medical Licensure and Discipline committees order requiring Dr. Kyros to attend the Center for Personalized Education for Physicians and complete a competence assessment program prior to re-

75. Kyros, 253 A.3d at 887–88.

76. *Id.* at 887.

77. *Id.* at 888 (Robinson, J., dissenting).

78. *Id.* at 889–90.

79. *Id.* at 890–91; 216 R.I. CODE R. 40-05-1.5.1(E).

80. Kyros, 253 A.3d at 891.

81. *Id.*

entering practice because the order was arbitrary and capricious.⁸² Additionally, the Court affirmed the trial court's decision in declining to remand the case back to the Board for further proceedings because remanding the case back to the Board would not further the interest of justice,⁸³ and remanding the matter back to the Board would not produce new information.⁸⁴

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82. *Id.* at 887 (majority opinion).

83. *Id.*

84. *Id.* at 888.