Summary of SC98640, *Blake H. Donaldson, D.O. v. Missouri State Board of Registration for the Healing Arts*

Proceeding originating in the Cole County circuit court, Judge Patricia S. Joyce

Argued and submitted November 10, 2020; opinion issued December 22, 2020, and modified on the Court's own motion January 12, 2021

Attorneys: Donaldson was represented by Scott R. Pool and Cody R. Holt of Gibbs Pool and Turner PC in Jefferson City, (573) 636-2614. The state board of registration for the healing arts was represented by Adam G. Grayson and Lisa J. Dawson of Grayson & Grayson LLC in Jefferson City, (573) 636-0308.

This summary is not part of the opinion of the Court. It is provided by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A doctor appeals from the administrative hearing commission's determination of cause for emergency suspension and discipline of his medical license and the state board of registration for the healing arts' decision to discipline his license. In a unanimous decision written by Judge Zel M. Fischer, the Supreme Court of Missouri affirms the circuit court's judgment upholding those decisions.

Facts: In 1995, Dr. Blake H. Donaldson became a licensed physician and surgeon in Missouri. In November 2017, the state board of registration for the healing arts filed a complaint against him and moved for the emergency suspension of his medical license after allegations were made he had inappropriate relations with a minor patient. A few days later, the administrative hearing commission issued an emergency suspension without a hearing. The commission subsequently held an evidentiary hearing to determine if Donaldson should be subject to discipline. Evidence was admitted that Donaldson sent the minor naked pictures and sexually suggestive messages and that he engaged in sexual activity with the minor. The commission found there was cause for discipline because Donaldson committed misconduct and his behavior was unethical and unprofessional in that he exercised his influence as a physician to engage the minor in sexual activity. The commission further found Donaldson's conduct was harmful and dangerous and constituted incompetence. The board then revoked Donaldson's license with no application for reinstatement for seven years. Donaldson sought review in the circuit court, which found sufficient evidence supported the decisions of the commission and the board. Donaldson appeals.

AFFIRMED.

Court en banc holds: (1) The commission's emergency suspension of Donaldson's medical license did not violate his procedural due process rights. A notice need not inform an individual of every avenue of relief available. Donaldson received sufficient notice in that, attached to the commission's notice was the complaint and the board's motion to emergently suspend him. The complaint and motion adequately informed Donaldson that: the board was seeking to discipline his license pursuant to section 334.100, RSMo; the board sought emergency suspension of his license pursuant to section 334.102, RSMo; and other statutory and regulatory procedures

applied to his case. Once Donaldson received the notice accompanied by the complaint and motion, he could turn to public sources to learn about the remedial procedures available to him.

(2) The commission's probable cause determination for emergency suspension did not violate Donaldson's due process rights. The commission's decision to emergently suspend him was not a disposition of the complaint on the merits, and neither party filed a motion requesting disposition without a hearing; therefore, 1 C.S.R. § 15-3.446(1) does not apply.

(3) Section 334.102 is not facially unconstitutional. Prior to seeking judicial review, a party must exhaust all administrative remedies. The commission's decision to emergently suspend a medical license, in and of itself, is not a final decision subject to judicial review. Rather, Donaldson received a prompt review hearing before the commission prior to a determination of cause for discipline. Furthermore, despite his challenges to the amount of time available for discovery and submission of additional evidence, Donaldson fails to make a showing that, under no set of circumstances, would the procedures set forth in section 334.103 be constitutionally valid.

(4) The commission's decision that there was cause to discipline Donaldson's license and emergently suspend him was not arbitrary, capricious, or unauthorized by law. The conduct on which an emergency suspension is based need not be presently occurring under the plain language of section 334.102.1; rather, the only prerequisite is the licensee has engaged in one of the prohibited activities listed in the statute. Furthermore, the commission did not err in failing to apply the test set forth in this Court's 1974 decision in *State ex rel. Pulliam v. Swink* before drawing an adverse inference from Donaldson's assertion of his Fifth Amendment right against self-incrimination. The test in *Pulliam* applies only when a defendant's answer is stricken for assertion of his or her right against self-incrimination. Finally, despite any inconsistencies in the victim's testimony, the commission made credibility determinations that are binding on this Court.

(5) The commissioner who determined Donaldson's license should be emergently suspended was not disqualified from presiding over the subsequent hearing regarding cause for discipline. Section 536.083, RSMo, prohibits a commissioner who conducts the first administrative hearing in a matter from presiding over any subsequent rehearing or appeal involving the same issues. A probable cause determination for emergency suspension does not contemplate a full adversarial hearing; rather, it requires the commissioner only to compare the materials submitted by the parties and determine whether there is cause for emergency suspension. Accordingly, the commissioner did not preside over an administrative hearing for purposes of section 536.083 when he determined there was probable cause for emergency suspension.