[Cite as *Abunku v. State Med. Bd. of Ohio*, 2012-Ohio-2734.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Orduen Abunku, M.D.,	:	
Appellant-Appellant,	:	
v.	:	No. 11AP-906 (C.P.C. No. 11CVF-04-5314)
State Medical Board of Ohio,	:	(ACCELERATED CALENDAR)
Appellee-Appellee.	:	

D E C I S I O N

Rendered on June 19, 2012

Graff & McGovern, LPA, Douglas E. Graff, and *Levi J. Tkach*, for appellant.

Michael DeWine, Attorney General, and *Henry G. Appel*, for appellee.

APPEAL from the Franklin County Court of Common Pleas

CONNOR, J.

{¶ 1} Appellant, Orduen Abunku, M.D. ("appellant"), appeals the September 22, 2011 judgment of the Franklin County Court of Common Pleas, in which the trial court affirmed the order of appellee, State Medical Board of Ohio ("board"), permanently revoking appellant's medical license for his violation of R.C. 4731.22(B)(24). For the following reasons, we affirm.

I. Facts and Procedural History

{¶ 2} Appellant is a physician specializing in general practice and nuclear medicine. In 1984, appellant graduated from Ahmadu Bello University in Zaria, Nigeria, with a bachelor of medicine and surgery degree. In 1997, appellant completed a one-year internship at Boston University Medical School. Appellant obtained his Ohio

license to practice medicine in 1998. In 1999, appellant completed a two-year residency in nuclear medicine at The Christ Hospital in Cincinnati, Ohio. After completing his residency, appellant began working as a contract physician for the Ohio Department of Rehabilitation and Correction. Additionally, appellant owns TriState Home Physicians, Ltd., specializing in home visits with patients.

{¶ 3} In a letter dated August 11, 2010, the board notified appellant of its intent to determine whether or not to discipline him for surrendering his Drug Enforcement Administration ("DEA") Certificate of Registration, BA6100236, to agents of the United States DEA on February 23, 2010. The letter also stated that appellant entered into a Memorandum of Agreement ("MOA") that same date, wherein he agreed to certain restrictions on future DEA certificates of registration.

{¶ 4} Further, the board's letter indicated that, pursuant to R.C. 4731.22(B)(24), appellant's DEA surrender and MOA constitute " '[t]he revocation, suspension, restriction, reduction, or termination of clinical privileges by the United States department of defense or department of veterans affairs or the termination or suspension of a certificate of registration to prescribe drugs by the drug enforcement administration of the United States department of justice.' "

{¶ 5} Pursuant to R.C. Chapter 119, the board's letter advised appellant of his right to request a hearing within 30 days of the mailing of the notice.

{¶ 6} On August 19, 2010, appellant timely requested a hearing in order to address the board's allegations, and further requested the opportunity to appear before and address the board when it reviewed any report and recommendation of a hearing examiner.

{¶ 7} On February 7, 2011, a board-appointed hearing examiner conducted an evidentiary hearing where Scott Kurtz ("Kurtz"), a DEA diversion investigator, testified on behalf of the state. Further, the record reflects that, in lieu of appearing in person, appellant submitted an unsworn narrative statement signed by two witnesses.

{¶ 8} Kurtz testified that appellant came to the DEA's attention through a large-scale national operation against internet pharmacies. Two of the pharmacies investigated, the Prescription Shop 1 and the Prescription Shop 2, were located in Ann Arbor, Michigan. Kurtz stated that through its investigation of these two pharmacies,

the DEA noticed that appellant "was the prescribing physician for the vast majority of prescriptions which were being dispensed through their internet websites." (Tr. 16.) Further, Kurtz stated that appellant primarily prescribed Hydrocodone, a Schedule III controlled substance used for treating moderate to severe pain. Kurtz testified that he found it suspicious that appellant "was in the Cincinnati area with * * * an alleged patient population in 45 states, where the prescriptions were being dispensed out of Ann Arbor, Michigan, and then mailed via one of the courier services to those patients." (Tr. 18.)

{¶ 9} On April 8, 2009, Kurtz, along with another DEA diversion investigator, interviewed appellant regarding his involvement with a company known as Med-Manage, Inc. ("Med-Manage"), and about prescribing controlled substance prescriptions via the internet. Kurtz testified as follows:

> Q. All right. Let's turn back to the conversation with [appellant]. Had he—In speaking with him did he acknowledge that he was prescribing these medications?
>
> A. Yes, he did acknowledge that.
>
> Q. And did he justify what he was doing?
>
> A. He justified by saying that he had spoke to a physician assistant who was handling the patient load, and thus utilizing [appellant] to get the controlled substances.
>
> Q. Did he indicate whether or not he was prescribing Hydrocodone?
>
> A. He indicated he was prescribing Hydrocodone; yes, he was.
>
> Q. Did he [give] you any indication whether it was a majority of the transactions?
>
> A. He said the vast majority. He didn't give us any figure.
>
> I told him approximately how many prescriptions at least had been dispensed from the two pharmacies in Ann Arbor, and he stated that that seemed out of the ordinary, that they may have been unauthorized at that point based on that large figure.

Q. How many prescriptions did you have that were attributable to [appellant]?

A. Approximately 15,500, approximately.

Q. Did [appellant] indicate how he was paid?

A. He said that he was paid $4,000 a month, and that would be whether he had authorized one prescription or a hundred. So that was a flat rate on a monthly basis.

Q. Did [appellant] indicate how many prescriptions of Hydrocodone he would typically do in a day?

* * *

A. Sure. [Appellant] estimated that he prescribed approximately 30 to 50 controlled substance prescriptions each day.

* * *

Q. Did you ask to see his patient records?

A. We did. We asked if he could provide us any of the information which would have at least shown him that the medical histories that he was prescribing for would have been legitimate, and he was unable to show us any of the medical records.

Q. Did he explain why he didn't have those?

A. Well, he tried to get into the—one of the websites at his computer while we were there, and he was—obviously there were no websites at that point.

And then he took us out to his vehicle where he thought he might have had some records as well, and he did a cursory search of his car, and again, nothing came up.

Q. Did he indicate how he had become involved in this arrangement?

> A. He was referred to it through a headhunter who was involved in a website. They had referred him to a Dr. Ibanez, who was located down in Florida.
>
> Dr. Ibanez ran an organization involved with internet pharmacies and prescriptions, and at that point he got [appellant] involved.
>
> Q. Mr. Kurtz, did the DEA seek to impose any discipline against [appellant]?
>
> A. Yes. DEA sought the imposition of an Order to Show Cause on his DEA registration. It was done via our chief counsel's office in Washington.
>
> Q. And was that—Do you know how that Order to Show Cause was resolved?
>
> A. It resolved in [appellant] actually surrendering his DEA number.
>
> * * *
>
> Q. [I]s [appellant] allowed to prescribe medications?
>
> A. In no way. Once a physician or any registrant surrenders their DEA certificate, they are not allowed to handle controlled substances in any manner, including prescribing, dispensing or administering.

(Tr. 21-22, 24-29.)

{¶ 10} In his narrative statement, appellant indicated that, in 2004, he learned about Med-Manage from a recruitment coordinator, and, in assuming it was a legitimate medical business, saw it as a way to grow his practice. Appellant's exhibit D. Subsequent to accepting the position, appellant alleged that he "was mislead and victimized by a sophisticated criminal organization." Appellant's exhibit D. Appellant wrote:

> In 2007[,] I became aware that Dr. Ibanez was being investigated for possibly violating the Controlled Substance Act. Part of the investigation included allegations that he was forging physician signatures to authorize prescriptions without the physicians' consent. I immediately terminated my employment and severed all ties with Med Manage, Inc.

Appellant's exhibit D. Further, appellant alleged that: (1) prior to working for Med-Manage, he applied for physician assistant authorization from the board; (2) on his application, he listed his intent to use a physician assistant ("PA") in his telemedicine practice; (3) the board requested further explanation of what appellant meant by "telemedicine;" (4) he replied to the board's question by listing the PA's duties in telemedicine as: telephone interview of established patients, review of medical records, developing treatment plans, and instituting and changing orders under the supervision of the physician; (5) on March 11, 2005, the board approved his PA supervision agreement for D'Etta Elaine Harman, a PA licensed in Ohio and Florida; and (6) at all times, he believed he was working within the requirements of the PA agreement. Additionally, appellant alleged that the DEA never criminally charged, indicted or arrested him for his involvement with Med-Manage.

{¶ 11} On February 17, 2011, the hearing examiner issued a report and recommendation finding that appellant's conduct constituted a violation of R.C. 4731.22(B)(24). R.C. 4731.22(B) states, in relevant part:

> The board, by an affirmative vote of not fewer than six members, shall, to the extent permitted by law, limit, revoke, or suspend an individual's certificate to practice * * * for one or more of the following reasons:
>
> * * *
>
> (24) The revocation, suspension, restriction, reduction, or termination of clinical privileges by the United States department of defense or department of veterans affairs or the termination or suspension of a certificate of registration to prescribe drugs by the drug enforcement administration of the United States department of justice[.]

The hearing examiner recommended that appellant's certificate to practice medicine and surgery in the state of Ohio be permanently revoked. In support of her proposed order, the hearing examiner stated:

> The Board has authority to take disciplinary action against [appellant's] medical license pursuant to R.C. 4731.22(B)(24) because he signed the Voluntary Surrender and Memorandum of Agreement which constitute a termination of his DEA certificate to prescribe controlled substances.

> In his statement, [appellant] seems to lay the blame on everybody but himself. He first suggests that this Board authorized him to practice telemedicine by granting his PA application. According to Respondent Exhibits F-H, [appellant] informed this Board that his PA would see 25 patients per day and that she would only hold telephone interviews with *established* patients. However, the evidence reveals that his PA saw 30-50 patients per day and that most, if not all, of the patients were *new* patients that did not necessarily live in Ohio. He then shifts the blame to his PA by stating that she assured him that she was reviewing all of the medical records and speaking to each patient personally. Finally, [appellant] claims that he did not authorize all of his prescriptions and seems to suggest that Dr. Ibanez forged his signature. However, Agent Kurtz testified that his investigation did not reveal any forgeries.
>
> [Appellant] is not as blameless and naïve as he would like this Board to believe. It was [appellant] who contacted the recruitment website inquiring about finding a job practicing internet medicine. He then took the job knowing that he was going to be prescribing controlled substances to patients all over the United States without performing a physical examination on the patient or ever speaking directly to the patient. After he took the job, he was prescribing 30 to 50 controlled substances (primarily hydrocodone) each day which resulted in approximately 15,500 prescriptions to patients in 48 states. He also did not have any medical records on any of the patients.
>
> This Board will never know the true extent of the harm caused by the thousands of controlled substance prescriptions issued by [appellant]. But, it is clear that [appellant] was either a willing participant in the national internet pharmacy scam or he was extremely negligent in handling his DEA certificate. Either way, [appellant] is not fit to hold a certificate to practice medicine and surgery in Ohio.

(Emphasis sic.) Report and Recommendation, at 8.

{¶ 12} On April 5, 2011, appellant filed objections to the hearing examiner's report and recommendation, along with a motion to appear at the April 13, 2011 meeting in order to personally address the board. On April 13, 2011, the board

considered the hearing examiner's report and recommendation, and issued an order permanently revoking appellant's certificate to practice medicine and surgery in the state of Ohio.

{¶ 13} On April 28, 2011, appellant appealed the board's order to the Franklin County Court of Common Pleas. On September 22, 2011, the trial court journalized an opinion and order affirming the board's decision. In its opinion and order, the trial court found that "the Board's decision was fully supported by reliable, substantial, and probative evidence. The Appellant was subject to discipline because he uncontrovertedly violated [R.C. 4731.22(B)(24)]. The severity of the sanction is not subject to modification by this Court." Opinion and Order, at 3.

II. Assignments of Error

{¶ 14} On October 21, 2011, appellant filed a timely notice of appeal, setting forth three assignments of error for our consideration:

> [I.] The lower court [erred] in affirming the State Medical Board of Ohio's Order permanently revoking Dr. Abunku's certificate to practice medicine and surgery in the State of Ohio, as Order is not supported by reliable, probative and substantial evidence and is not in accordance with law, specifically through the reliance on inadmissible evidence.
>
> [II.] The Order permanently revoking Dr. Abunku's license is a disproportionately harsh sanction compared to other sanctions addressing substantially more egregious violations.
>
> [III.] The Order must be vacated because it does not comply with Board Disciplinary Guidelines and the recently adopted rule governing technical infractions.

III. Standard of Review

{¶ 15} "In an administrative appeal pursuant to R.C. 119.12, the trial court reviews an order to determine whether it is supported by reliable, probative, and substantial evidence, and is in accordance with the law." *Schechter v. Ohio State Med. Bd.*, 10th Dist. No. 04AP-1115, 2005-Ohio-4062, ¶ 55, citing *Huffman v. Hair Surgeon, Inc.*, 19 Ohio St.3d 83, 87 (1985). The Supreme Court of Ohio has defined the concepts of reliable, probative, and substantial evidence 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.

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

{¶ 16} The standard of review is more limited on appeal to this court. "While it is incumbent on the trial court to examine the evidence, this is not a function of the appellate court." *Pons v. Ohio State Med. Bd.*, 66 Ohio St.3d 619, 621 (1993). In reviewing the court of common pleas' determination that the board's order was supported by reliable, probative, and substantial evidence, this court's role is confined to determining whether the court of common pleas abused its discretion. *Roy v. Ohio State Med. Bd.*, 80 Ohio App.3d 675, 680 (10th Dist.1992). "The term 'abuse of discretion' connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983), quoting *State v. Adams*, 62 Ohio St.2d 151, 157 (1980). " On questions of law, however, the common pleas court does not exercise discretion and the court of appeals' review is plenary." *Landefeld v. State Med. Bd.*, 10th Dist. No. 99AP-612, 2000 WL 767606, at *3, 2000 Ohio App. LEXIS 2556 , at *8 (June 15, 2000).

IV. Arguments and Analysis

{¶ 17} In his first assignment of error, appellant argues that the trial court erred in affirming the board's order to permanently revoke appellant's certificate to practice medicine and surgery in the state of Ohio because it is not supported by reliable, probative, and substantial evidence and is not in accordance with law. *See* appellant's brief, at 9. Specifically, appellant contends that the hearing examiner and board, erroneously admitted and improperly relied upon a DEA order to show cause which the parties resolved prior to determining any of the allegations set forth therein. *See* appellant's brief, at 10. In support of this argument, appellant relies upon our decision in *Robert H. Perchan, M.D. v. Ohio State Med. Bd.*, 10th Dist. No. 91AP-270, 1991 WL 115819, 1991 Ohio App. LEXIS 2953 (June 13, 1991).

{¶ 18} In *Perchan*, the appellant pleaded guilty to one count of drug trafficking in violation of R.C. 2925.03. The hearing examiner recommended revoking the appellant's medical license because "his felony conviction arose out of acts committed while in the course of his medical practice." *Id*., 1991 WL 115819, at *1, 1991 Ohio App. LEXIS 2953, at *2. The appellant objected to the hearing examiner's report and recommendation, and the trial court issued an order adopting the same. *Id*. The appellant appealed, claiming, among other things, that the trial court erred in failing to find that the hearing examiner wrongly admitted into evidence the full 21-count indictment against the appellant, of which he pleaded guilty to only one count. *Id*., 1991 WL 115819, at *2, 1991 Ohio App. LEXIS 2953, at *5. The appellant further claimed that "the admission of such evidence before [the] appellee improperly influenced [the] appellee so that it invoked the harshest of penalties." *Id*., 1991 WL 115819, at *2, 1991 Ohio App. LEXIS 2953, at *6. In affirming the decision, we stated:

> While this court agrees that the admission of a multicount indictment, only one count of which [the] appellant had been convicted, and [the] appellee's prior investigation of [the] appellant in which no disciplinary action was taken, was erroneously admitted into evidence, this court cannot conclude that the trial court abused its discretion in affirming [the] appellee's order since it does not appear that [the] appellant was prejudiced by the admission of this evidence. [The] [a]ppellant was informed that [the] appellee was considering taking action, which could include the revocation of his certificate to practice, on the basis that he had been convicted of a felony. The record indicates, and the parties agree, that [the] appellant pleaded guilty to a violation of R.C. 2925.03, possessing Phentermine, a Schedule IV drug, in an amount greater than the bulk amount but less than three times the bulk amount, and being in violation of R.C. Chapters 3719 and 4731.

{¶ 19} Here, like in *Perchan*, the board notified appellant of its intent to determine whether to take action against him, including permanent revocation of his certificate to practice medicine for violating R.C. 4731.22(B)(24). In addition, the board specifically informed appellant that he may be subject to disciplinary action for surrendering his DEA certificate of registration on February 23, 2010, and for agreeing to certain restrictions on future DEA certificates of registration in his agreement with

the DEA. As such, appellant had proper notification regarding the conduct subject to review at the hearing.

{¶ 20} Further, even if it was inappropriate for the hearing examiner to admit the DEA's order to show cause into evidence, we agree with the trial court's conclusion that appellant was not prejudiced because other reliable, probative, and substantial evidence in the record proves that appellant violated R.C. 4731.22(B)(24).

{¶ 21} First, the record indicates that appellant entered into an agreement with the DEA, and as part of its terms and conditions, immediately surrendered his DEA certificate of registration by executing a Form DEA-104. *See* Voluntary Surrender of Controlled Substance Privileges form and appellant's exhibits D and M. Second, Kurtz's testimony and report of investigation reveal the DEA's investigation of appellant's internet prescribing practices and appellant's voluntary surrender of his DEA number. (Tr. 26-27.) Third, the hearing examiner's report and recommendation does not specifically reference the DEA's order to show cause, nor does it discipline appellant for any uncharged conduct listed in the order to show cause. *See Macheret v. State Med. Bd. of Ohio,* 10th Dist. No. 09AP-849, 2010-Ohio-3483, ¶ 26.

{¶ 22} The hearing examiner's report and recommendation does, however, reference Kurtz's report of investigation, Kurtz's testimony, the executed Voluntary Surrender of Controlled Substance Privileges form, the MOA, and appellant's narrative statement. *See, generally,* Report and Recommendation. The evidence referenced by the hearing examiner clearly demonstrates that appellant violated R.C. 4731.22(B)(24) by voluntarily surrendering his DEA certification. Therefore, because the board only sanctioned appellant for violating R.C. 4731.22(B)(24), it appears that appellant was not prejudiced by the admission of the DEA's order to show cause.

{¶ 23} Additionally, appellant alleges that the hearing examiner's report and recommendation wrongly: (1) places undue weight on the inaccurate assumption that appellant was the custodian of physical patient medical records; (2) states that Kurtz testified that his investigation did not reveal any forgeries; and (3) references patient demographics without any supporting, credible evidence. *See* appellant's brief, at 11-12. As previously stated, in reviewing the court of common pleas' determination that the board's order was supported by reliable, probative, and substantial evidence, this court's

role is confined to determining whether the court of common pleas abused its discretion. *Roy* at 680. However, absent an abuse of discretion, we may not substitute our judgment for that of the board or the trial court on issues of fact. *See Rizvi* v. *State Med. Bd. of Ohio*, 138 Ohio App.3d 682, 684 (10th Dist.2000.)

{¶ 24} Based upon the record before us, we cannot find that the trial court abused its discretion in finding that the board's order is supported by reliable, probative, and substantial evidence and is in accordance with law. Therefore, we refuse to substitute our judgment for that of the board or the trial court.

{¶ 25} Appellant's first assignment of error is overruled.

{¶ 26} In his second assignment of error, appellant argues that permanently revoking his license is a disproportionately harsh sanction compared to other sanctions addressing substantially more egregious violations. *See* appellant's brief, at 13. In support of this argument, appellant contends that his punishment is grossly disproportionate to the punishment given another doctor who fully admitted to unlawful prescribing practices. *See* appellant's brief, at 14.

{¶ 27} However, the state argues that the trial court correctly recognized that it did not have the power to modify appellant's sanction because: (1) the sanction imposed was permitted under Ohio law pursuant to R.C. 4731.22(B)(24); (2) the board had reliable, probative, and substantial evidence to support the finding that appellant's DEA registration was terminated or suspended; and (3) there is no requirement that the board give the same sanction to every doctor committing the same violation. *See* appellee's brief, at 14-15.

{¶ 28} In its opinion and order, the trial court addressed appellant's argument regarding the alleged disproportionate sanctions given for the same offense, stating:

> [T]he fact that another doctor received a lesser sanction is irrelevant unless the Appellant can establish a constitutional claim of discriminatory or selective enforcement, which [appellant] does not even raise as an issue. Furthermore, the Board has established the clear differences between Appellant's sanction and the other physician's case and the sanction the Board imposed therein.
>
> The Board was authorized to permanently revoke the Appellant's medical license for his violation of [R.C.

> 4731.22(B)(24)]. The Court believes the sanction may have been overly harsh. However, this Court has no authority to modify the penalty imposed. * * * This Court must defer to the Board's expertise and judgment when reviewing a sanction imposed by the Board or by any administrative agency.

See Opinion and Order, at 3.

{¶ 29} The Supreme Court of Ohio's precedent in *Henry's Café, Inc. v. Bd. of Liquor Control Comm.*, 170 Ohio St. 233 (1959), paragraphs two and three of the syllabus, "prohibits a reviewing court from modifying a sanction that an agency has statutory authority to impose if reliable, probative, and substantial evidence supports the agency's order." *Kellough v. Ohio State Bd. of Edn.*, 10th Dist. No. 10AP-419, 2011-Ohio-431, ¶ 57. Further, in *Goldfinger Ents., Inc. v. Ohio Liquor Control Comm.*, 10th Dist. No. 01AP-1172, 2002-Ohio-2770, ¶ 23, this court stated that "[a]s a practical matter, courts have no power to review penalties meted out by the commission. Thus, we have little or no ability to review a penalty even if it seems on the surface to be unreasonable or unduly harsh." *See also Staschak v. State Med. Bd. of Ohio*, 10th Dist. No. 03AP-799, 2004-Ohio-4650, ¶ 50; *Henry's Café.*

{¶ 30} Therefore, because we found the board's order to be supported by reliable, probative, and substantial evidence, we cannot modify the board's sanction permanently revoking appellant's certificate to practice medicine and surgery in the state of Ohio.

{¶ 31} Appellant's second assignment of error is overruled.

{¶ 32} We now address appellant's third assignment of error regarding whether the board's order must be vacated because it does not comply with: (1) Board Disciplinary Guidelines, and (2) the recently adopted rule governing technical infractions. *See* appellant's brief, at 15. Specifically, appellant contends that violations of R.C. 4731.22(B)(24) fall within the "catchall" provision of the disciplinary guidelines which "does not list specific maximum or minimum penalties." *See* appellant's brief, at 15. Further, appellant contends that, between the date the trial court issued its decision and the filing of the present appeal, the board, *In re Pomputius*, State Med. Bd. of Ohio case No. 11-CRF-044, adopted a "remedial" approach to reviewing "technical violations"

of R.C. 4731.22(B)(24). Appellant also argues that the board should apply this approach retroactively to the present matter. *See* appellant's brief, at 16.

{¶ 33} In response, the state contends that appellant's third assignment of error is forfeited and waived because: (1) it was not raised in the trial court, and (2) appellant admitted to violating R.C. 4731.22(B)(24). *See* appellee's brief, at 17-18. Further, the state contends that *Pomputius* is neither a broad policy decision, nor is it applicable to appellant's case. *See* appellee's brief, at 18-19.

{¶ 34} Upon review of the record, we find that appellant raises these arguments for the first time on appeal. It is well-settled that "[a] party generally waives the right to appeal an issue that could have been, but was not, raised in earlier proceedings." *Jain v. Ohio State Med. Bd.*, 10th Dist. No. 09AP-1180, 2010-Ohio-2855, ¶ 10. Appellant could have alleged any issues regarding the state's non-compliance with board disciplinary guidelines in the trial court. However, the record indicates that appellant failed to raise these allegations below. Additionally, although the board issued the *Pomputius* decision subsequent to the trial court's opinion and order in this case, appellant's argument still lacks merit because the facts of *Pomputius* are clearly distinguishable from the matter at hand.

{¶ 35} In *Pomputius*, the board accused William Francis Pomputius, Jr., M.D., of violating R.C. 4731.22(B)(24), due to prescribing a certain combination of pain-management narcotics for patients at Victorioso Family Clinic. On September 23, 2009, Dr. Pomputius voluntarily surrendered his right to prescribe only Schedule IV and V drugs, while maintaining his right to prescribe Schedule II and III drugs. As such, Dr. Pomputius *limited* his DEA certificate of registration, but did not completely *terminate* his DEA certificate of registration. The *Pomputius* hearing examiner found that the voluntary surrender form did not constitute the termination or suspension of a certificate of registration, pursuant to R.C. 4731.22(B)(24), because it only limited Dr. Pomputius' ability to prescribe Schedule IV and V drugs. The hearing examiner dismissed the case because Dr. Pomputius did not violate R.C. 4731.22(B)(24).

{¶ 36} Therefore, for the reasons stated above, we decline to further address appellant's third assignment of error.

{¶ 37} Appellant's third assignment of error is overruled.

V. Conclusion

{¶ 38} Based upon the foregoing, we find that appellant has failed to show that the trial court abused its discretion in finding the board's order was supported by reliable, probative, and substantial evidence and in accordance with law. Absent an abuse of discretion, we cannot substitute our judgment for that of the trial court or the commission. *18121 Euclid, Inc. v. Liquor Control Comm.*, 10th Dist. No. 05AP-354, 2005-Ohio-7025, ¶ 33. Accordingly, we overrule appellant's three assignments of error. The judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

SADLER and TYACK, JJ., concur.
