

Circuit Court for Baltimore City
Case No. 24-C-20-002228

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1038

September Term, 2020

ROOZBEH BADII, M.D.,

v.

MARYLAND STATE BOARD OF
PHYSICIANS

Nazarian,
Arthur,
Ripken,

JJ.

Opinion by Ripken, J.

Filed: August 13, 2021

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal arises from a final decision of the Maryland Board of Physicians (“the Board”) concluding that appellant, Roozbeh Badii, M.D. (“Badii”) was mentally incompetent to practice medicine and failed to cooperate with an investigation of the Board, as required by Maryland Code, Health Occupations (“HO”) § 14-404(a)(4), (33) (2014 Repl.). Following the Board’s final decision, Badii sought judicial review from the Circuit Court for Baltimore City, which affirmed the decision of the Board. On appeal to this Court, Badii presents four issues for review. First, he contends that the Board erred in failing to afford deference to the ALJ’s demeanor-based credibility determinations of the expert witnesses. Second, Badii contends there was insufficient evidence to support the Board’s determination that he was mentally incompetent. Third, Badii contends HO § 14-404(a)(4) is unconstitutionally vague. Last, Badii contends there was insufficient evidence to support the Board’s determination that he failed to cooperate with the investigation. For the reasons stated below, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On October 17, 2011, Badii was licensed by the Board to practice medicine in the State of Maryland, focusing on internal medicine.¹ On or about February 2018, the Board began to investigate Badii following a complaint from a pharmacy benefit management organization regarding Badii’s telemedicine prescribing practices. As part of its investigation, the Board issued a subpoena to Badii via first-class mail to his address of

¹ Badii’s license expired on September 30, 2018. Pursuant to HO § 14-403(a), a practitioner’s license may not “lapse by operation of law while the individual is under investigation or while charges are pending.” Therefore, for the purpose of discipline, Badii’s license did not expire during these proceedings.

record requiring him to produce the records of ten patients.² After repeated attempts to contact Badii in order to acquire the requested information for the investigation, Badii provided only one of the ten requested patient records. Badii initially told the Board investigator that he was unable to obtain the remaining records because they were located in telemedicine practices that he no longer worked for or had gone out of business. Later, during a hearing on the matter, Badii also claimed that his wife stole his copies of the medical records.

While the Board’s investigation into Badii’s prescribing practices was underway, Badii filed a complaint against another doctor, in which Badii accused the doctor of falsifying Badii’s medical records and selling them to a hospital for \$250,000. In support of his complaint, Badii included a child support financial statement in which he indicated he was unemployed due to “psychiatric diagnosis and inability to work as a physician.” After an investigation into Badii’s complaint against the other doctor, the Board closed its investigation without action. However, the Board’s review of the child support document raised concerns for the Board regarding Badii’s mental competence to practice medicine. Therefore, the Board opened a new investigation to determine whether Badii was competent to practice medicine.

The Board began its investigation into Badii’s mental competence by reviewing Badii’s treatment records from various physicians who had evaluated him over the years. Next, in accordance with HO § 14-402(a), the Board required Badii to be evaluated by a

² Pursuant to HO § 14-316(f), physicians are required to provide their current address to the Board and to update any changes of address within 60 days.

board-certified forensic psychiatrist, Dr. Zimnitzky, for competency. Dr. Zimnitzky began his evaluation by interviewing Badii. During the interview, Badii provided his perspective on his psychological history, which Dr. Zimnitzky documented in his Independent Psychiatric Evaluation. Since medical school, Badii had seen numerous psychiatrists and had been diagnosed with a wide range of disorders, including Cyclothymic Disorder, Unspecified Mood Disorder, Seasonal Affective Disorder, Adjustment Disorder, Paranoid Personality Disorder, and multiple diagnoses on the bipolar spectrum. While there were times that Badii followed the medication instructions of his providers, he also had self-proscribed medications and tapered off his medications without medical input. Dr. Zimnitzky observed that Badii was “excitable” during the interview and was worried about being diagnosed with Bipolar Disorder. In addition, Dr. Zimnitzky noted that Badii “was very focused throughout the interview on the multiple people against him.”

In addition, as part of his examination, Dr. Zimnitzky reviewed the evaluations, records, and letters from five mental health professionals that Badii had seen over several years. The diagnoses and treatments varied. In 2018, as part of ongoing custody and divorce cases, a California court ordered Badii to undergo a psychological evaluation. The California psychiatrist noted that Badii believed he was misdiagnosed with bipolar disorder and that Badii had called one of his former psychiatrists in an effort to have his diagnosis changed to Seasonal Affective Disorder. Badii believed multiple people in his life were working with the FBI and the CIA to conspire against him and that he had connections with the mafia. As part of the court evaluation, the California psychiatrist administered an objective psychological test, which indicated Badii was managing “long-term psychosis or

characterological problems.” The psychiatrist diagnosed Badii with Bipolar 1 disorder, Adjustment Disorder, and Paranoid Personality Disorder.

In addition to the interview with Badii and the records from Badii’s past psychiatrists and therapist, Dr. Zimnitzky reviewed court documents involving Badii, Badii’s correspondence with the Board and his former boss, and other relevant documents. Based on all of this information, Dr. Zimnitzky noted a consistent pattern of “periods of episodes of depressive and manic symptoms” and diagnosed Badii with Unspecified Bipolar Disorder. In addition, Dr. Zimnitzky found that Badii “presents with a history of mood instability, anger, impulsivity and poor boundaries in multiple settings” and that he “demonstrates poor insight into his illness.” Badii “repeatedly contacted a prior psychiatrist in order to have that psychiatrist change his diagnosis.” Despite multiple diagnoses on the bipolar spectrum during periods in his life where his illness had a significant impact on his education, work, and personal life, Badii has been “insistent that he only has Seasonal Affective Disorder.” Dr. Zimnitzky concluded his report with the following: “At this time, given [Badii’s] anger, irritability, impulsivity, poor insight and judgment, it is my opinion, to a reasonable degree of medical certainty, that [Badii] is currently unable to safely practice medicine.”

Following Dr. Zimnitzky’s report, on April 11, 2019, the Board charged Badii with being professionally, physically, or mentally incompetent, in violation of HO § 14-404 (a)(4), and failing to cooperate with a lawful investigation conducted by the Board, in violation of HO § 14-404 (a)(33). Badii requested an investigatory hearing on the charges,

which the Board delegated to the Office of Administrative Hearings in accordance with COMAR 10.32.02.04B.

At the investigatory hearing before the administrative law judge (“ALJ”), both parties offered evidence. Expert witnesses testified regarding Badii’s competency to practice medicine. The Board’s expert witness, Dr. Zimnitzky, was admitted as an expert in forensic psychiatry. Dr. Zimnitzky noted that a medical diagnosis alone does not mean that someone is incompetent to practice medicine, but the practitioner must have insight into the condition in order to ensure the condition is being properly monitored and treated. Dr. Zimnitzky’s review of Badii’s records and individual assessment of Badii led him to conclude that Badii “demonstrates poor insight into his illness.” Despite multiple diagnoses on the bipolar spectrum, Badii insists he only has Seasonal Affective Disorder. Dr. Zimnitzky was concerned that the lack of insight into his diagnosis meant that Badii would be unable or unwilling to manage his illness. On this basis, in addition to Badii’s “anger, irritability, impulsivity, poor insight and judgment,” Dr. Zimnitzky concluded that Badii was unable to “safely practice medicine.” Dr. Zimnitzky noted that patient evaluations about Badii’s ability to practice would be outside of the scope of any determination regarding Badii’s ability to competently practice with a mental illness. Dr. Zimnitzky elaborated on this as follows:

[ZIMNITZKY]: There are many—there are probably countless physicians out there who have bipolar disorder who—who are getting treatment and who are functioning fine and taking care of their patients. So the—the part of this that—that—so it’s not just the diagnosis of bipolar disorder that [is] leading to my opinion. That—that he’s presented with mood instability, anger, impulsivity in multiple settings.

There's been some complaints in the past of how he's presented in— in work settings with regard to this. Although, I'm not—I'm not stating that he is currently—he has—I'm—I'm not saying right that he has presented that in a work setting.

He—he—it has clearly reported that he's exhibited inappropriate behavior in a courtroom setting. There have been concerns about his behavior during supervised visitations with his children. He's had multiple—in the course of the evaluation there were—you know, with—in the course of the investigation by the Board there's been multiple angry and accusatory e-mails. And—and—you know—and so—and that he had tried to reach me multiple times afterwards saying he was angry about me having information that was supplied by the Board.

That he—he is insistent that he does not have a bipolar disorder. He is stating—despite all the information that I have in terms of looking over things, in terms of his history, and in terms of his treatment, he is stating that he has been clearly misdiagnosed and that he only has a seasonal affective disorder.

[BOARD]: Why—why is that significant?

[ZIMNITZKY]: Well, it's—it's significant because—that he has clearly presented, not just with symptoms, but—not just with symptoms but he's clearly—he's had a hospitalization and he has had a treatment over a number of years of medications that are—that are used to treat bipolar disorder. And he has been diagnosed with bipolar disorder in the past. And he had contacted Dr. Hertzberg, after finding out that Dr. Hertzberg had diagnosed him with bipolar disorder, tried to get him to change his diagnosis. And I think that one—and one of the aspects that—as I stated before, if one has bipolar disorder that doesn't make them incompetent to safely practice medicine. What one needs to have is insight into their illness in order to make sure that they're monitoring it appropriately, getting appropriate treatment.

Dr. Badii is basically stating that he—he's—he's stated that multiple people are plotting against him. That he is stating that any of the doctors that stated that he [has] bipolar disorder were all completely wrong. And that he has no bipolar disorder, and—and therefore, I believe that he has little insight into his illness. And with—with the lack of lack of insight gives me concerns about his—his ability to manage his illness. That there are ongoing—there had been ongoing—you know, up until the time with e-mails and so forth, ongoing concerns about impulsivity, anger, accusatory e-mails, feeling that others are out to get him. And—and I believe that it's important for someone with—and these can be partial with—with a bipolar disorder and it's important that one has some insight into their symptoms, insight in their

diagnosis so they can participate in treatment in order to adequately have the bipolar disorder managed so they can safely practice medicine.

Badii's expert witness, Dr. Spodak, was admitted as an expert in forensic psychiatry. As part of his investigation, he reviewed Badii's records, conducted a psychological test, and reviewed patient reviews—provided by Badii. Dr. Spodak noted that there were not any patient complaints about Badii, nor were there any medical malpractice lawsuits against Badii. Dr. Spodak admitted that the results of the psychological test indicated that Badii “minimalized his faults, denied any problems, and was not very introspective or insightful about his behavior.” “In addition, the psychological testing revealed that [Badii] is likely to project an excessively positive self-image, externalize blame, see other people as being responsible for his difficulties, and is unlikely to seek treatment or cooperate fully with treatment if it is implemented.” Despite these findings, Dr. Spodak relied heavily on what he perceived to be Badii's professional competence—the favorable reviews, lack of lawsuits, and lack of complaints—to support his conclusion that Badii was mentally competent to practice medicine.

After the three-day hearing, the ALJ submitted a proposed decision to the Board on November 26, 2019. As to the first charge under HO § 14-404(a)(4), the ALJ found that Badii was mentally competent to practice medicine. In support of this conclusion, the ALJ noted that he gave more weight to the testimony of Dr. Spodak than Dr. Zimnitzky. The ALJ found Dr. Spodak's consideration of Badii's history working with patients, or the “quality of medical care,” was critical in determining whether Badii was mentally competent to practice medicine. Dr. Zimnitzky's investigation was limited to the scope of

mental competence, therefore the ALJ found he did not consider the quality of Badii's patient care in coming to his conclusion.

As to the second charge under HO § 14-404(a)(33), the ALJ found that Badii failed to cooperate with the Board's investigation. The Board called as a witness an employee of the Board, who was part of the team investigating Badii, to testify regarding her numerous attempts to contact Badii about the investigation. She described her various efforts in contacting Badii, including sending two subpoenas to his address of record, as well as emailing and calling Badii to remind him about the investigation and the requested medical records. Testifying in his own defense, Badii provided various excuses about the missing medical records, and alleged that the employee was lying about certain attempts to contact him. The ALJ determined that Badii's failure to produce the medical records of requested patients, his inconsistent testimony, refusal to be interviewed by the Board, and evasive answers to Board questions demonstrated that Badii failed to cooperate with the Board's investigation in violation of HO § 14-404 (a)(33). The ALJ recommended the Board sanction Badii by suspending his license to practice medicine for one year, which could be reduced if Badii cooperated with the investigation.

Following the ALJ's proposed decision, both parties filed exceptions with the Board. On February 12, 2020, the Board heard both parties' exceptions. Upon consideration of the arguments, the Board issued its Final Decision and Order on April 20, 2020. The Board found that Badii was mentally incompetent and that Badii failed to cooperate with the Board's investigation. The Board suspended Badii's license to practice medicine for a minimum of one year and until he was found to be competent by the Board.

Badii petitioned for judicial review of the Final Decision and Order in the Circuit Court for Baltimore City, and the circuit court affirmed the Board’s decision. This timely appeal followed.

ISSUES PRESENTED FOR REVIEW

On appeal to this Court, Badii presents four issues for review, which we have condensed and rephrased as follows:³

- I. Did the Board err in failing to afford deference to the ALJ’s demeanor-based credibility determinations of witnesses?

³ Rephrased from:

- I. Did the Board err in failing to afford proper deference to the demeanor-based credibility determinations of the ALJ, which must be afforded substantial deference where the credibility of witnesses is pivotal to the final decision of the Board?
- II. Did the Board err in finding that it had presented substantial evidence of the alleged mental incompetency where the Board introduced no evidence to suggest that [Badii] was incapacitated in any respect as a result of his condition and no evidence to suggest that [Badii] had ever posed a safety risk to his patients?
- III. Did the Board err in disciplining [Badii] for “mental incompetency” under an unconstitutionally vague statute where no standard for “mental incompetency” is defined in the statute, there are numerous plain language and legal definitions of the term, and no case has ever determined which standard should apply?
- IV. Did the Board err in finding that [Badii] failed to comply with their investigation where [Badii], a California resident, was not legally obligated to respond to a Maryland subpoena and the Board made no attempt to properly obtain a California subpoena pursuant to local California discovery rules?

We shall address Badii’s third contention regarding the constitutionality of HO § 14-404 in our issue II.

- II. Was there substantial evidence in the record to support the Board’s conclusion that Badii was mentally incompetent to practice medicine?
- III. Was there substantial evidence in the record to support the Board’s conclusion that Badii failed to cooperate with the Board’s investigation?

For the reasons explained below, we conclude that there was no error. We shall affirm.

DISCUSSION

I. THE ALJ’S WITNESS CREDIBILITY DETERMINATIONS WERE NOT BASED ON Demeanor AND THEREFORE WERE NOT ENTITLED TO DEFERENCE.

Our review of an administrative agency’s legal conclusion is *de novo*, and “we may reverse an administrative decision premised on erroneous legal conclusions.” *Catonsville Nursing Home, Inc. v. Loveman*, 349 Md. 560, 569 (1998). When an agency submits a case to the Office of Administrative Hearings, an ALJ will ordinarily preside over the case, hear testimony, review submitted evidence, and submit a recommendation to the agency based on the findings of fact at the hearing. Md. Code, State Government § 10-205 (2014 Repl.). The agency then reviews the recommendation along with the evidence in the record in order to come to its own conclusion. *Md. Bd. of Physicians v. Elliott*, 170 Md. App. 369, 382 (2006).

When experts offer conflicting testimony, credibility plays a “central role” in the agency’s decision, and such credibility can be based on credentials, data, logical analysis, and other factors discernible from the record. *Consumer Prot. Div. v. Morgan*, 387 Md. 125, 202 (2005). An agency owes no deference to an ALJ’s credibility determinations that rest upon these considerations, and a reviewing court will support the agency’s conclusion so long as there is substantial evidence in the record to support it. *St. Bd. of Physicians v.*

Bernstein, 167 Md. App. 714, 761 (2006). Credibility determinations can also be based on witness demeanor, which is “his outward behavior and appearance while testifying before the fact finder: his facial expressions, tone of voice, gestures, posture, eye-contact with the questioner and others in the courtroom, and readiness or hesitation to answer the questions posed.” *Id.* at 759. When the ALJ’s witness credibility determinations are demeanor-based, the findings are given “substantial deference and can be rejected by the agency only if it gives strong reasons for doing so.” *Dept. of Health & Mental Hygiene v. Shrieves*, 100 Md. App. 283, 302 (1994)

In the case before us, contrary to Badii’s contention, the ALJ did not make demeanor-based credibility determinations. At the hearing, there was a classic “battle of the experts”—both the Board and Badii offered doctors who were admitted to testify as experts in forensic psychiatry, but reached conflicting conclusions about Badii’s mental competency. In his proposed decision, the ALJ noted that Dr. Zimnitzky did not consider “the quality of mental care” provided by Badii in coming to his conclusion that Badii was mentally incompetent to practice medicine. In contrast, the ALJ found Dr. Spodak’s consideration of patient reviews—provided by Badii himself—as well as the lack of malpractice lawsuits and complaints against Badii to be persuasive evidence that despite Badii’s mental illness, he was mentally competent to practice. The ALJ stated he “gave more weight to the testimony of Dr. Spodak than the testimony of Dr. Zimnitzky.”

Nowhere in the ALJ’s findings of fact did the ALJ indicate that either doctor’s *demeanor* while testifying made either doctor more or less credible or more or less persuasive. Rather, the ALJ focused on what each expert considered in coming to their

respective conclusions. Since the ALJ’s credibility determinations were not based on demeanor, the Board was not required to afford the ALJ’s conclusions substantial deference. We hold that the Board did not err in declining to defer to the ALJ’s credibility determinations, and that the Board was entitled to review the record and make its own determinations as to the experts’ credibility.

II. THERE IS SUBSTANTIAL EVIDENCE IN THE RECORD TO SUPPORT THE BOARD’S CONCLUSION THAT BADII IS MENTALLY INCOMPETENT TO PRACTICE MEDICINE.

Badii next argues there is no evidence the record to support the Board’s finding of his mental incompetence to practice medicine. According to Badii, the Board either did not introduce any evidence that he presented a risk to patients, or the evidence did not demonstrate how he posed a risk. Badii alternatively contends that HO § 14-404(a)(4)’s definition of mental incompetence is unconstitutionally vague.

A. Preservation of the Constitutional Challenge

Before addressing Badii’s argument that there was insufficient evidence to support the Board’s finding that he was mentally incompetent to practice medicine, we briefly address his contention that the phrase “mentally incompetent,” as articulated in HO § 14-404, is unconstitutionally vague. On judicial review before the circuit court, Badii admitted that the issue was not preserved for review. The constitutionality of § 14-404 was never challenged before the ALJ, nor was it raised in the exceptions argued before the Board. Badii invites us now to use our discretion, as articulated in Md. Rule 8-131(a) to review this unpreserved issue. We decline to do so. *See Bd. of Physician Quality Assurance v. Levitsky*, 353 Md. 188, 207–08 (1999) (“We have held, consistently, that questions,

including Constitutional issues, that could have been but were not presented to the administrative agency may not ordinarily be raised for the first time in an action for judicial review.”).

B. Standard of Review

“When this Court has before it the decision of an administrative agency, we review directly the agency’s decision and not that of the lower court[.]” *In re J.C.N.*, 460 Md. 371, 386 (2018). While we apply the same standard of review as the circuit court, we “look[] through the circuit court’s . . . decisions” and review the administrative agency’s final decision directly. *People’s Counc. for Balt. Cty. v. Surina*, 400 Md. 662, 681 (2007). This Court “must review the agency’s decision in the light most favorable to it” and recognize that “the agency’s decision is prima facie correct and presumed valid.” *Critical Area Comm’n for the Chesapeake & Atl. Coastal Bays v. Moreland, LLC*, 418 Md. 111, 123 (2011) (quoting *Md. Aviation Admin. v. Noland*, 386 Md. 556, 571, (2005)). Such review is narrowly “limited to determining if there is [1] substantial evidence in the record as a whole to support the agency’s findings and conclusions, and [2] to determine if the administrative decision is premised upon an erroneous conclusion of law.” *Cosby v. Dep’t of Human Res.*, 425 Md. 629, 638 (2012) (quoting *Bd. of Physician Quality Assurance v. Banks*, 354 Md. 59, 67–68 (1999)).

To determine whether there is substantial evidence in the record to support the agency’s findings and conclusions, we look to see if the determination is “supported by evidence which a reasonable person could accept as adequately supporting [the] conclusion.” *Kenwood Gardens Condos., Inc. v. Whalen Props., LLC*, 449 Md. 313, 325

(2016)). We do *not* resolve conflicting evidence—doing so is squarely within the province of the administrative agency. *Banks*, 354 Md. at 68.

C. Mental Incompetence to Practice Medicine

Pursuant to HO § 14-404(a)(4), after a hearing, a disciplinary panel acting on behalf of the Board may “reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee . . . is professionally, physically, or mentally incompetent.” In any disciplinary case, “the Board may make its own decisions about bias, interest, credentials of expert witnesses, the logic and persuasiveness of their testimony, and the weight to be given their opinions.” *Bernstein*, 167 Md. App. at 761. As the Court of Appeals stated in *Bd. of Physician Quality Assurance v. Banks*, “an administrative agency’s interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts. Furthermore, the expertise of the agency in its own field should be respected.” 354 Md. at 69 (internal citations omitted).

The Board investigated Badii for mental and professional incompetence and concluded there was insufficient evidence to determine whether Badii was professionally competent to practice medicine, but sufficient evidence existed to find he was mentally incompetent to practice medicine. In support of its finding of mental incompetence, the Board noted that Dr. Zimnitzky’s report focused on Badii’s long history of mental illness and included his personal evaluation of Badii. Dr. Zimnitzky reviewed the evaluations and records of five mental health professionals that either treated or evaluated Badii, as well as court documents, and Badii’s correspondence with the Board. In addition, Badii filed a child support document in California indicating he was unable to practice due to his mental

illness. Dr. Spodak's objective psychological testing revealed that Badii minimized his faults, denied psychological problems, and lacked sufficient insight about his behavior.

In addition to his objective psychological testing, Dr. Spodak considered Badii's positive patient reviews, lack of lawsuits and lack of patient complaints, and therefore determined Badii was mentally competent to practice despite the results of the psychological testing. The Board gave Dr. Zimnitzky's testimony more weight than Dr. Spodak's, because it focused exclusively Badii's mental competency rather than conflating it with his professional competency, which is a separate consideration under HO § 14-404(a)(4).⁴ In addition, the Board concluded that Dr. Spodak's findings that Badii could self-regulate his practice by ceasing to see patients when he is symptomatic was flawed, given that the results of psychological testing indicated he lacked sufficient insight into his condition.

A reasonable person could conclude that in light of all the evidence presented, particularly Dr. Zimnitzky's report, Dr. Spodak's psychological testing, and Badii's testimony, Badii was mentally incompetent to practice medicine. We conclude there was substantial evidence in the record to support the Board's determination that Badii was mentally incompetent to practice medicine.

⁴ Under HO § 14-404(a)(4), the Board may reprimand, suspend, or revoke a medical license if the Board concludes the licensee "is professionally, physically, **or** mentally incompetent." Therefore, the Board need only prove one of these three to take disciplinary action.

III. THERE IS SUBSTANTIAL EVIDENCE IN THE RECORD TO SUPPORT THE BOARD'S CONCLUSION THAT BADIИ FAILED TO COOPERATE WITH THE BOARD'S INVESTIGATION.⁵

Pursuant to HO § 14-404(a)(33), a physician's license may be suspended by a disciplinary panel, after a hearing, if the panel concludes that the physician "[f]ails to cooperate with a lawful investigation conducted by the Board or a disciplinary panel." Our standard of review as to Badiи's failure to cooperate with the Board's investigation under HO § 14-404(a)(33) is the same as that which we described under HO § 14-404(a)(4)—whether there is substantial evidence in the record to support the Board's conclusion. *See Banks*, 354 Md. at 69.

Badiи failed to provide nine out of ten patient records that the Board requested as part of its investigation, failed to respond to two Board subpoenas, and failed to update his address with the Board, as required by HO § 14-316(f). While Badiи alleged in his exceptions before the Board that there was no proof that subpoenas were sent to him and that he had never been contacted by the Board, the Board concluded that there was no merit to these contentions. In agreeing with the ALJ's credibility determinations, the Board found that evidence presented at the hearing proved by the preponderance of the evidence that the subpoenas were sent and that the Board made repeated attempts to contact him.

⁵ Badiи argued for the first time on appeal in the circuit court, and again in this Court, that he was under no obligation to comply with a Maryland subpoena as a California resident. As Badiи admitted in the circuit court, the issue of the legality of the subpoenas was not raised. As such, pursuant to Md. Rule 8-131, we decline to consider this unpreserved issue on appeal.

The record demonstrates that a compliance officer for the Board testified describing all of her attempts to contact Badii, while Badii offered conflicting information about the contacts between himself and the Board during the investigative process. The officer confirmed that subpoenas were sent by first-class mail to the address of record. Badii failed to provide the Board with nine of ten requested patient records, which thwarted the Board's ability to investigate his prescribing practices. At no point during the hearing before the ALJ, the exceptions before the Board, nor the appeal to the circuit court, did Badii contest the claim that he failed to update his address as required by HO § 14-316(f). In light of all of the evidence in the record, a reasonable person could find that the evidence supports the conclusion that Badii failed to cooperate with the investigation. We hold that there was sufficient evidence to support the Board's conclusion that Badii failed to cooperate with the investigation.

**JUDGMENTS OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**