SIXTH DIVISION
December 16, 2016

No. 1-15-2843

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ALAN H. OLEFSKY, M.D.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 15 CH 00125
	)	
THE ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION; JAY STEWART, Director of The Division of Professional Regulation of The Illinois Department of Financial and Professional Regulation; and BRENT E. ADAMS, Secretary of The Illinois Department of Financial and Professional Regulation,	)	
	)	Honorable
	)	Sophia Hall,
Defendants-Appellees.	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 *Held*: Administrative agency's determination that plaintiff violated sections 22(A)(9) and 22(A)(34) of the Medical Practice Act of 1987 is confirmed, where agency's factual and credibility findings were not against the manifest weight of the evidence and its ultimate conclusion was not clearly erroneous; however, because a number of the violations found by agency were overturned on administrative review, this matter is remanded to the agency for reconsideration of the sanction to be imposed upon plaintiff for the remaining, confirmed violations.

¶ 2 Plaintiff-appellant, Alan H. Olefsky, M.D., brought this action for administrative review against defendants-appellees, the Illinois Department of Financial and Professional Regulation;

Jay Stewart, Director of the Division of Professional Regulation of the Illinois Department of Financial and Professional Regulation; and Brent E. Adams, Secretary of the Illinois Department of Financial and Professional Regulation (collectively, the Department), seeking reversal of the Department's conclusion that plaintiff's medical license should be indefinitely suspended for a minimum of three years due to multiple violations of the Medical Practice Act of 1987 (the Act). 225 ILCS 60/1 *et seq*. (2014). The circuit court confirmed the Department's decision in part and reversed it in part, and plaintiff has appealed.

¶ 3 For the following reasons, we confirm the Department's finding that plaintiff violated two sections of the Act, and remand this matter to the Department for it to reconsider the discipline to be imposed for those remaining, confirmed violations.

¶ 4 I. BACKGROUND

¶ 5 The record reflects that plaintiff was first licensed as a physician in Florida in 1987 and in Illinois in 1988. The record also reflects that plaintiff has a significant history of drug and alcohol abuse, as well as related discipline with respect to his state and federal medical licenses and permits.

¶ 6 In 1989, plaintiff presented two forged prescriptions for a fictitious patient to a pharmacy in Florida. While plaintiff was acquitted of criminal charges brought by the State of Florida, the incident resulted in the federal Drug Enforcement Agency (DEA) revoking plaintiff's federal registration and permit to prescribe controlled substances in 1992. As a result of this action taken by the DEA, the Department's predecessor and plaintiff agreed to the entry of a consent order placing plaintiff's Illinois medical license on probation for one year.

¶ 7 Between 2002 and 2004, after plaintiff regained his DEA registration, he issued a number of false prescriptions for controlled substances in the names of others for his personal use. He

was also convicted for driving under the influence. These incidents led the Department to temporarily suspend plaintiff's medical license and his Illinois controlled substance license. In November 2006, the Department and plaintiff agreed to the entry of a second consent order placing plaintiff's medical license on probation for a minimum of five years. The conditions of that probation required plaintiff to, *inter alia*, abstain from alcohol, and submit quarterly reports as to his compliance with his probation. However, in January 2007, plaintiff was hospitalized for alcohol poisoning, which led the Department to again temporarily suspend plaintiff's medical license.

¶ 8 In May 2007, the Department and plaintiff agreed to the entry of a third consent order which again placed plaintiff's medical license on probation for a minimum of five years, to begin at the conclusion of an additional period of temporary suspension. Conditions of that probation again required plaintiff to submit quarterly reports as to his compliance with his probation. This probationary period began in December 2007, when plaintiff's license was restored to active status.

¶ 9 The record also reflects that plaintiff twice applied to again obtain a DEA registration to prescribe controlled substances. His first attempt was denied in a final order entered in August 2007 (2007 DEA order), while the second application was denied in a final order entered in April 2011 (2011 DEA order). The DEA's decision in each instance was based, in part, upon the DEA's conclusion that the public interest would not be served by granting a registration to plaintiff in light of his extensive history of alcohol and drug use and his fraudulent use of false prescriptions. Moreover, while plaintiff waived his right to a hearing with respect to the denial of his initial application, the 2011 DEA order was entered only after an administrative hearing at which plaintiff was found to have provided false testimony.

¶ 10 In June 2013, the Department initiated the proceedings at issue here by filing an administrative complaint against plaintiff seeking further discipline with respect to his Illinois medical license and Illinois controlled substance license. The operative, two-count, second amended complaint was filed in July 2014. In count I, the Department alleged that plaintiff had failed to report the 2007 DEA order to the Department, either in any of the quarterly reports he was required to file pursuant to his probation, or in his 2008 application for the renewal of his Illinois medical license, in violation of sections 22(A)(9), 22(A)(12), 22(A)(15), and 22(A)(34) of the Act. 225 ILCS 60/22(A)(9), 22(A)(12), 22(A)(15), 22(A)(34) (West 2014). In count II, the Department alleged that plaintiff had failed to report the 2011 DEA order to the Department, either in any of the quarterly reports he was required to file pursuant to his probation, or in his 2011 application for the renewal of his Illinois medical license, in violation of sections 22(A)(9), 22(A)(12), 22(A)(15), and 22(A)(34) of the Act. *Id*. In each count, the DEA asserted that these failures required that plaintiff's medical license and Illinois controlled substance license be "suspended, revoked, or otherwise disciplined." Plaintiff did not file an answer to this administrative complaint.

¶ 11 An evidentiary hearing was held before an administrative law judge (ALJ) in July 2014. The Department called plaintiff and Temple Hall, the Department probation compliance investigator assigned to plaintiff, as witnesses. The Department also introduced numerous exhibits into evidence, which included extensive documentary evidence regarding defendant's prior federal and Illinois disciplinary proceedings, the three prior consent orders, the 2007 and 2011 DEA orders, the quarterly reports filed by plaintiff in accordance with his probation, and plaintiff's 2008 and 2011 applications for renewal of his Illinois medical license. Plaintiff testified briefly on his own behalf and entered a single document into evidence.

¶ 12 The evidence presented at the hearing demonstrated that plaintiff never explicitly informed the Department of the 2007 or 2011 DEA orders denying his applications for DEA registration. Ms. Hall specifically testified that this information was not contained in any of plaintiff's quarterly reports, and that neither plaintiff, nor anyone on his behalf notified her of those orders in any other manner. This was despite the fact that plaintiff's quarterly reports required him to indicate whether or not he had "been terminated/suspended/disciplined, [or] been denied/lost privileges or resigned," and to provide a "detailed explanation" to any affirmative answer to that question. Ms. Hall did testify that two quarterly reports for 2010 could not be located in the Department's files, and they were, therefore, not presented at the hearing. Ms. Hall did testify that any communications received from plaintiff or his attorney should be in the Department's files.

¶ 13 In addition, neither DEA order was reported on the face of plaintiff's 2008 or 2011 applications for renewal of his Illinois medical license. This is despite the fact that the 2008 application specifically required plaintiff to indicate if he had been denied a license or permit in the last three years and to "attach" a "detailed explanation" for any affirmative response. While in his 2008 renewal application plaintiff affirmatively responded "yes" to this question, he merely stated that an explanation was "submitted [and] on file." The 2008 renewal application introduced by the Department contained no attachment containing a detailed explanation.

¶ 14 For his part, plaintiff affirmatively testified that he did inform the Department about the 2007 DEA order, but his testimony about how this occurred was vague and inconsistent. He alternatively testified that he "believed" or "assumed" that his attorney provided that information. He provided similarly vague and inconsistent testimony regarding how the Department was notified of the 2011 DEA order. Plaintiff introduced an unsigned, undated

document into evidence at the hearing that contained a narrative of his disciplinary history from 1989 to 2007. While this narrative did disclose the 2007 DEA order, it made no mention of the 2011 DEA order. Once again, plaintiff testified that he "believed" that it had been prepared by his attorney and provided to the Department. Plaintiff provided no other proof as to when or how this document was transmitted to the Department, or any evidence that it was actually received. The only date on the document itself was an indication that it had been faxed in 2014, well after the Department initiated this administrative action against plaintiff.

¶ 15 In September 2014, the ALJ entered a written report and recommendation that plaintiff be found to have committed six violations of four separate sections of the Act. These included the violations of sections 22(A)(9) and 22(A)(34) at issue on appeal.

¶ 16 With respect to section 22(A)(9), which provides that discipline may be imposed for a doctor's "[f]raud or misrepresentation in applying for, or procuring, a license under this Act or in connection with applying for renewal of a license under this Act" (225 ILCS 60/22(A)(9) (West 2014)), the ALJ concluded that plaintiff improperly failed to report the 2007 DEA order in his 2008 renewal application. In coming to this conclusion, the ALJ specifically relied upon the documentary evidence, the testimony of Ms. Hall, and its conclusion that plaintiff was evasive and his testimony was inconsistent, based on conjecture, and not credible. The document plaintiff presented was also found to be nothing more than a "self-serving" statement, with plaintiff's testimony regarding the document found to be incredible. In the end, the ALJ concluded that the Department presented evidence that the 2007 DEA order was never reported in plaintiff's 2008 renewal application, and that plaintiff simply failed to present any credible evidence that he had properly reported the 2007 DEA order in his 2008 renewal application. However, the ALJ specifically found plaintiff did not violate section 22(A)(9) of the Act by failing to report the

2011 DEA order in his 2011 application for renewal of his Illinois medical license, as it was not clear from the record that plaintiff actually learned of that order prior to filing the 2011 application.

¶ 17 With respect to section 22(A)(34) of the Act, which provides that the Department may impose discipline for the "failure to report to the Department any adverse final action taken against them by another licensing jurisdiction, *** by any governmental agency, by any law enforcement agency, or by any court for acts or conduct similar to acts or conduct which would constitute grounds for action as defined in this Section," (225 ILCS 60/22(A)(34) (West 2014)), the ALJ concluded that plaintiff twice violated this section by failing to report the 2007 and 2011 DEA orders to the Department. Specifically, plaintiff failed to report these orders in his 2008 or 2011 license renewal applications or in any of his quarterly probation reports. The ALJ's conclusion was supported by similar factual and credibility determinations as discussed above, with the ALJ again indicating that it found plaintiff's evidence and testimony incredible.

¶ 18 In light of his findings and conclusions, the ALJ recommended that plaintiff's medical license be indefinitely suspended for a minimum of three years.

¶ 19 In October 2014, the Department's Medical Disciplinary Review Board adopted the ALJ's findings, conclusions, and recommendations, and recommended that the Director of the Department do likewise. Plaintiff filed a petition for rehearing, and that petition was denied by the Department's Director in a written order entered in December 2014. That order, the final administrative order entered in this matter, also indefinitely suspended plaintiff's medical license for a minimum of three years.

¶ 20 Plaintiff filed this action for administrative review in January 2014, seeking reversal of the Department's conclusions that he had violated the Act and that his license should, therefore,

be suspended. After full briefing by the parties, the circuit court issued a written decision in August 2015, in which it confirmed the Department's decision in part and reversed it in part. Specifically, the circuit court found that plaintiff was properly found to have: (1) violated section 22(A)(9) once by improperly failing to report the 2007 DEA order in his 2008 renewal application, and (2) violated section 22(A)(34) twice by failing to report the 2007 and 2011 DEA orders in his 2008 or 2011 license renewal applications, or in any of his quarterly probation reports. The remaining three statutory violations of sections 22(A)(12) and 22(A)(15) of the Act found by the Department were found to be unfounded. The written decision was silent with respect to plaintiff's request that the discipline imposed by the Department be reversed.

¶ 21 Plaintiff filed a motion for reconsideration and clarification in which he asked the circuit court to reverse its decision to affirm the Department's finding with respect to the violations of sections 22(A)(9) and 22(A)(34) of the Act and the suspension of his license, or to clarify the proper discipline, if any, to be imposed by the Department in light of the circuit court's partial reversal. The circuit court denied plaintiff's motion, and he appeals.[1]

¶ 22 II. ANALYSIS

¶ 23 On appeal, plaintiff contends that he was improperly found to have violated sections 22(A)(9) and 22(A)(34) of the Act. He also contends that, even assuming he was properly found to have violated the Act, the discipline imposed upon him by the Department was excessive and should be reversed. We first address our jurisdiction over this appeal, before turning to a discussion of the merits.

¶ 24 A. Jurisdiction

[1] The circuit court also entered a stay of the Department's order, which remains in effect pending the outcome of this appeal.

¶ 25 In motions presented to this court, as well as in their appellate briefs, the parties have raised questions regarding the finality of the circuit court's ruling on plaintiff's complaint for administrative review and the resultant ability of this court to exercise jurisdiction over plaintiff's current appeal. For the following reasons, we conclude that we have jurisdiction to consider this appeal.

¶ 26 This court has jurisdiction to review administrative decisions only as provided by law. Ill. Const. 1970, art. VI, § 6; *Town & Country Utilities, Inc. v. Illinois Pollution Control Board*, 225 Ill. 2d 103, 121-22 (2007). Section 3-112 of the Code of Civil Procedure (Code) provides that "[a] final decision, order, or judgment of the Circuit Court, entered in an action to review a decision of an administrative agency, is reviewable by appeal as in other civil cases." 735 ILCS 5/3-112 (West 2014). Looking to the law applicable to "other civil cases," we note that except as otherwise specifically provided by the Illinois Supreme Court Rules, this court only has jurisdiction to review final judgments, orders, or decrees. Ill. S. Ct. R. 301 (eff. Feb.1, 1994), *et seq.*; *Almgren v. Rush–Presbyterian–St. Luke's Medical Center*, 162 Ill. 2d 205, 210 (1994). "A judgment or order is final for purposes of appeal if it disposes of the rights of the parties, either on the entire case or on some definite and separate part of the controversy, and, if affirmed, the only task remaining for the trial court is to proceed with execution of the judgment." *Brentine v. DaimlerChrysler Corp.*, 356 Ill. App. 3d 760, 765 (2005).

¶ 27 Here, plaintiff's complaint for administrative review sought reversal of the Department's conclusion that plaintiff had committed violations of four separate sections of the Act, as well as reversal of its decision to indefinitely suspend plaintiff's medical license for a minimum of three years. In its initial written decision, the circuit court specifically affirmed the Department's finding with respect to violations of two sections of the Act and reversed the Department's

findings with respect to the remaining violations. The written decision was silent with respect to plaintiff's request that the discipline imposed by the Department be reversed. A separate order entered by the circuit court the same day stated that issuance of the written decision "concludes the case in this court."

¶ 28 In response to the written decision and order, plaintiff filed a motion for reconsideration and clarification in which he asked the circuit court to reconsider: (1) its decision to affirm the Department's finding with respect to violations of sections 22(A)(9) and 22(A)(34) of the Act; and (2) the propriety of the discipline imposed by the Department, in light of the circuit court's partial reversal with respect to the violations of the Act found by the Department. Plaintiff's motion specifically asked the circuit court to "clarify how this Court's partial reversal affects Defendant's discipline against Dr. Olefsky, and, in the event [the Department] seeks to still impose discipline, order that such discipline not rise to the level of a licensure suspension." After full briefing, which included significant additional discussion by the Department regarding the fact that the circuit court's written order did not specifically address the issue of discipline, the circuit court entered an order denying plaintiff's motion. That order further indicated that "[t]his order represents a final order in this case."

¶ 29 " 'The appealability of an order is determined by its substance rather than its form.' " *Schal Bovis, Inc. v. Casualty Insurance Co*., 314 Ill. App. 3d 562, 567 (1999) (quoting *Boonstra v. City of Chicago*, 214 Ill. App. 3d 379, 385 (1991)); see also *Schal Bovis*, 314 Ill. App. 3d at 567 ("it is the substance of the trial court's order which determines whether it is final, not whether the court has used any particular language"). Furthermore, orders of the circuit court must be interpreted from the entire context in which they were entered, with reference to other parts of the record including the pleadings, motions and issues before the court and the

arguments of counsel. *Dewan v. Ford Motor Co*., 343 Ill. App. 3d 1062, 1069 (2003); *P & A Floor Co. v. Burch*, 289 Ill. App. 3d 81, 88 (1997). Orders must be construed in a reasonable manner so as to give effect to the apparent intention of the circuit court. *Id.*; *P & A Floor Co*., 289 Ill. App. 3d at 88-89.

¶ 30 Plaintiff specifically asked the circuit court to reverse the discipline imposed upon him by the Department in his complaint. In his motion for reconsideration and clarification, he asked that the discipline be reversed or reduced. In ruling on both requests, the circuit court declined to provide plaintiff with any such relief, and further indicated that its rulings "conclude[d] the case in this court," or "represent[ed] a final order in this case." While it is true that the circuit court's orders never specifically discussed the issue of discipline, it is evident from these orders—after considering the entire context in which they were entered—that the circuit court was well aware of plaintiff's requests, declined to provide any relief with respect to the discipline imposed by the Department, and intended its partial confirmation and partial reversal of the Department's decision to resolve all of the issues presented in plaintiff's complaint for administrative review. We, therefore, conclude that the circuit court entered a final order with respect to plaintiff's complaint, and we have jurisdiction to consider plaintiff's appeal.

¶ 31 B. Violations of the Act

¶ 32 We next address plaintiff's assertion that he was improperly found to have violated sections 22(A)(9) and 22(A)(34) of the Act. 225 ILCS 60/22(A)(9), 22(A)(34) (West 2014).

¶ 33 Our review of the Department's final administrative decision is governed by the Administrative Review Law. 735 ILCS 5/3-101, *et seq*. (West 2014); 225 ILCS 60/41(a) (West 2014). While our review extends to all questions of law and fact presented by the record (735 ILCS 5/3-110 (West 2014)), "[i]n administrative cases, our role is to review the decision of the

administrative agency, not the determination of the circuit court." *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 531 (2006). Nevertheless, because in this case the circuit court granted plaintiff partial relief, plaintiff appeals from only that relief which the circuit court denied him, and the Department did not file a cross-appeal with respect to the violations that were overturned by the circuit court, our jurisdiction is limited to considering the issues raised by plaintiff. *Cole v. Retirement Board of Policemen's Annuity & Benefit Fund of City of Chicago*, 396 Ill. App. 3d 357, 366 (2009); *Workmann v. Illinois State Board of Education*, 229 Ill. App. 3d 459, 462 (1992). Thus, we need not further consider the propriety of the violations initially found by the Department that were subsequently overturned by the circuit court.

¶ 34 The standard of review we apply to the issues before us depends on the question presented. *Comprehensive Community Solutions, Inc. v. Rockford School District No. 205*, 216 Ill. 2d 455, 471 (2005). When an issue of pure law is raised, we review it *de novo*. *Village Discount Outlet v. Department of Employment Security*, 384 Ill. App. 3d 522, 525 (2008). Our supreme court has described this type of review as " 'independent and not deferential.' " *Goodman v. Ward*, 241 Ill. 2d 398, 406 (2011) (quoting *Hossfeld v. Illinois State Board of Elections*, 238 Ill. 2d 418, 423 (2010)).

¶ 35 When the issue raised is one of fact, we will only ascertain whether such findings of fact are against the manifest weight of the evidence. *Provena Covenant Medical Center v. Department of Revenue*, 236 Ill. 2d 368, 386-87 (2010). A determination is against the manifest weight of the evidence if the opposite conclusion is clearly evident. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210-11 (2008).

¶ 36 A mixed question of law and fact is reviewed under the clearly erroneous standard. *Heabler v. Illinois Department of Financial & Professional Regulation*, 2013 IL App (1st)

111968, ¶ 17. Mixed questions of fact and law are " 'questions in which the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard, or to put it another way, whether the rule of law as applied to the established facts is or is not violated.' " *Cinkus*, 228 Ill. 2d at 210-11 (quoting *American Federation of State, County and Municipal Employees, Council 31 v. State Labor Relations Board*, 216 Ill. 2d 569, 577 (2005). An agency's decision is 'clearly erroneous' when the reviewing court is left with a firm and definite conviction that the agency has committed a mistake. *City of Sandwich v. Illinois Labor Relations Board*, 406 Ill. App. 3d 1006, 1008 (2011).

¶ 37 In addition, "[t]he findings and conclusions of the administrative agency on questions of fact shall be held to be *prima facie* true and correct." 735 ILCS 5/3-110 (West 2014). In addition, "[i]t is not our function to reevaluate witness credibility or resolve conflicting evidence. [Citation.] If the issues are merely ones of conflicting testimony or credibility of witnesses, the determinations of the agency should be upheld." *Parikh v. Division of Professional Regulation of Department of Financial & Professional Regulation*, 2014 IL App (1st) 123319, ¶ 28. Furthermore, "under any standard of review, a plaintiff to an administrative proceeding bears the burden of proof, and relief will be denied if he or she fails to sustain that burden. *Marconi*, 225 Ill. 2d at 532-33.

¶ 38 We first consider the Department's finding that plaintiff violated section 22(A)(9) of the Act by failing to report the 2007 DEA order in his 2008 application for renewal of his Illinois medical license. The Department is authorized to "revoke, suspend, place on probation, reprimand, refuse to issue or renew, or take any other disciplinary or non-disciplinary action as the Department may deem proper with regard to the license or permit of any person issued under this Act," upon a number of specified grounds. 225 ILCS 60/22(A) (West 2014). Among those

grounds is "[f]raud or misrepresentation in applying for, or procuring, a license under this Act or in connection with applying for renewal of a license under this Act." 225 ILCS 60/22(A)(9) (West 2014).

¶ 39 In its decision discussing the charge that plaintiff violated section 22(A)(9) of the Act, the Department first made a factual finding that plaintiff failed to report the 2007 DEA order in his 2008 application for renewal of his Illinois medical license. In support of this finding, the Department noted that the application itself contained no explicit reference to the 2007 DEA order, and no attachment to the 2008 renewal application referencing that order was included in the Department's files. The Department also noted that Ms. Hall, plaintiff's probation monitor at the Department, testified that neither plaintiff nor anyone acting on his behalf ever notified her of the 2007 DEA order.

¶ 40 The Department did acknowledge that in his 2008 renewal application, plaintiff affirmatively responded "yes" to a question asking if he had a professional license or permit denied or disciplined in any way since July 31, 2005, and indicated in response to the application's request for a "detailed explanation" for that response that an explanation was "submitted [and] on file." However, the Department also found that plaintiff's testimony regarding his assertion that an explanation was actually provided was inconsistent, lacking in credibility, and merely self-serving. Specifically, the Department noted that plaintiff could do no more than repeatedly speculate as to whether his attorney provided a detailed statement regarding the 2007 DEA order in connection with the 2008 renewal application, that the document plaintiff claimed his attorney may have provided was unsigned and undated, and that plaintiff's overall demeanor demonstrated his evasiveness and general lack of credibility with respect to his contention that a detailed explanation had been provided as part of the application.

¶ 41 On appeal, plaintiff contends that these findings were against the manifest weight of the evidence, with plaintiff essentially asserting that the evidence actually established that he either did provide or intended to provide the Department with a detailed explanation regarding the 2007 DEA order in connection with this 2008 renewal application. Ultimately, however, the record clearly reflects that the Department's conclusion that plaintiff failed to report the 2007 DEA order in his 2008 application for renewal of his Illinois medical license was based upon its careful weighing of the evidence and its conclusion that plaintiff's testimony lacked credibility.

¶ 42 As we noted above, plaintiff has the burden of proof in this administrative review proceeding (*Marconi*, 225 Ill. 2d at 532-33), the findings of the Department on these questions of fact are *prima facie* true and correct (735 ILCS 5/3-110 (West 2014), and "[i]t is not our function to reevaluate witness credibility or resolve conflicting evidence (*Parikh*, 2014 IL App (1st) 123319, ¶ 28). At best, plaintiff's arguments demonstrate that the evidence could have supported a different factual conclusion. However, it is well recognized that "[t]he mere fact that an opposite conclusion is reasonable or that the reviewing court might have ruled differently will not justify reversal of the administrative findings. [Citation.] The reviewing court may not substitute its judgment for that of the administrative agency. [Citation.] If the record contains evidence to support the agency's decision, it should be affirmed." *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88 (1992). Because we cannot say that opposite conclusion is clearly evident, we find the Department's conclusion that plaintiff failed to report the 2007 DEA order in his 2008 application for renewal of his Illinois medical license was not against the manifest weight of the evidence. *Cinkus*, 228 Ill. 2d at 210-11.

¶ 43 Having affirmed the Department's factual finding that plaintiff failed to report the 2007 DEA order in his 2008 application for renewal, we now turn to the question of whether it

properly concluded that this failure to report constituted a violation of section 22(A)(9) of the Act. This is a mixed question of law and fact that we review under the clearly erroneous standard. *Heabler*, 2013 IL App (1st) 111968, ¶ 17; *Cinkus*, 228 Ill. 2d at 210-11 (whether the rule of law is violated, as applied to the established facts, is a mixed question of law and fact. *Id.*

¶ 44 In finding that plaintiff's reporting failure was a violation of section 22(A)(9), the Department specifically considered the possibility that plaintiff had candidly answered "yes" to the question regarding license or permit denial or discipline on his 2008 renewal application, and then simply neglected to attach or otherwise provide the Department with a detailed explanation regarding the 2007 DEA order. It also specifically noted that any finding of a violation must be supported by clear and convincing evidence. In the end, and only after specifically considering all of the evidence presented and its own assessment of plaintiff's credibility, the Department rejected that possibility and concluded that plaintiff had in fact made "misrepresentations" regarding any discipline or denials of a license or permit that plaintiff experienced between 2005 and the time he filed his 2008 renewal application.

¶ 45 On appeal, plaintiff contends that this conclusion is clearly erroneous because: (1) his affirmative answer to the question regarding license or permit denial or discipline on his 2008 renewal application and his indication that an explanation was "submitted [and] on file" establishes that there was no "complete omission or affirmative false statement;" (2) the Department did not present clear and convincing evidence that he "intentionally and willfully" intended to omit a detailed explanation regarding the 2007 DEA order; and (3) therefore, the only reasonable conclusion is that any possible omission was unintended, a mistake, or the result of a third party, *i.e.*, plaintiff's lawyer. We disagree.

¶ 46 Courts have previously recognized that omitting information in a medical license application may constitute a misrepresentation under section 22(A)(9) of the Act. *Abrahamson v. Department of Professional Regulation*, 153 Ill. 2d 76, 97-100 (1992); *Kazmi v. Department of Professional Regulation*, 2014 IL App (1st) 130959, ¶¶ 23-24. Furthermore, as the Department itself recognized in its decision, "clear and convincing evidence or testimony is not synonymous with uncontradicted, unimpeached, crystal clear or perfect testimony." *Cronin v. McCarthy*, 264 Ill. App. 3d 514, 525 (1994). In light of this authority, the facts of this case, and the fact that we are not left with a firm and definite conviction that the Department has committed a mistake, we conclude that the Department's finding that plaintiff violated section 22(A)(9) of the Act was not clearly erroneous.

¶ 47 We next consider the Department's finding that plaintiff twice violated section 22(A)(34) of the Act, which provides that the Department may impose discipline for the "failure to report to the Department any adverse final action taken against them by another licensing jurisdiction (any other state or any territory of the United States or any foreign state or country), by any peer review body, by any health care institution, by any professional society or association related to practice under this Act, by any governmental agency, by any law enforcement agency, or by any court for acts or conduct similar to acts or conduct which would constitute grounds for action as defined in this Section." 225 ILCS 60/22(A)(34) (West 2014).

¶ 48 In its decision discussing the charge that plaintiff twice violated this section of the Act, the Department first made a factual finding that plaintiff failed to report both the 2007 and 2011 DEA orders. In reaching this conclusion, the Department relied in part upon the factual determinations and credibility determinations we discussed above regarding plaintiff's failure to report the 2007 DEA order in the 2008 application for renewal of his medical license. *Supra*

¶¶ 39-40, 44. In addition, the Department noted that the 2011 renewal application did not reference the 2011 DEA order, did not contain any attachments, and that plaintiff could only testify that he believed his attorney provided notice of the 2011 DEA order and could only speculate that such notice had in fact been provided. The Department did not find this testimony credible. The Department found that the 2008 and 2011 DEA orders were not reported in any of the quarterly reports plaintiff was required to file pursuant to his probation.

¶ 49 On appeal, plaintiff raises a number of reasons why these findings were against the manifest weight of the evidence. With respect to whether he reported the 2007 DEA order, plaintiff first restates the arguments regarding his purported disclosure in his 2008 renewal application that we addressed above. We again reject those arguments. Second, plaintiff contends that the evidence actually established that he reported the 2007 DEA order in two documents attached to the second quarterly probation report he filed in 2008. However, our review of the record confirms that these documents merely indicated that plaintiff did not have a valid DEA registration at that time. The documents did not indicate in any way that plaintiff's application for such a registration had in fact already been denied in the 2007 DEA order, which was the adverse final action that was required to be reported by the Act.

¶ 50 With respect to whether he reported the 2011 DEA order, plaintiff first contends that the evidence against him was not clear and convincing in light of the fact that the Department could not produce two of plaintiff's 2010 quarterly reports at the hearing. We find this argument to be baseless, as it is evident that plaintiff simply could not have reported a decision entered in April 2011 in the quarterly reports he filed in 2010. Second, defendant contends that it was improper to charge him with improperly failing to report the 2011 DEA order in his 2011 renewal application because there was insufficient evidence that plaintiff actually knew about the 2011 DEA order at

the time he filed the 2011 renewal application. However, the Department did not make any conclusion that defendant *intentionally* withheld information in the 2011 application to support a violation of section 22(A)(34) of the Act. The Department simply made the factual finding that the 2011 application, like all the other documents before it, did not include such a disclosure.

¶ 51 Because we cannot say that opposite conclusion is clearly evident, we find the Department's conclusion that plaintiff failed to report the 2007 or 2011 DEA orders was not against the manifest weight of the evidence. *Cinkus*, 228 Ill. 2d at 210-11.

¶ 52 Having affirmed the Department's factual finding that plaintiff failed to report the 2007 and 2011 DEA orders, we consider whether it also properly concluded that this failure to report constituted a violation of section 22(A)(34) of the Act. Again, this is a mixed question of law and fact that we review under the clearly erroneous standard. *Heabler*, 2013 IL App (1st) 111968, ¶ 17.

¶ 53 On appeal, plaintiff raises two arguments as to why, even assuming the above factual findings are correct, they cannot support a conclusion that he violated section 22(A)(34) of the Act by failing to report the 2011 DEA order. He makes no such arguments with respect to the 2008 DEA order.

¶ 54 First, he contends that the 2011 DEA order was not an "adverse final action" under section 22(A)(34) because it did not change the status quo. Plaintiff characterizes the 2011 DEA order as simply affirming the 2007 DEA order. We reject this argument because it is belied by a record that clearly indicates that plaintiff filed two separate applications for a DEA registration, and that both were denied. Indeed, the the very language of the 2011 DEA order itself indicates that the 2007 DEA order was a final order denying a "previous application" for a DEA registration, while the 2011 DEA order denied plaintiff's subsequent application.

¶ 55 Second, plaintiff contends that the 2011 DEA order did not represent an adverse final action imposed "for acts or conduct similar to acts or conduct which would constitute grounds for action as defined in this Section." 225 ILCS 60/22(A)(34) (West 2014). However, the 2011 DEA order denying plaintiff DEA registration was specifically premised, in part, upon the fact that it would not be in the "public interest" to award such a registration to someone who had attempted or succeeded in obtaining controlled substances for his personal use through the use of "fraudulent prescriptions." A person holding a medical license in Illinois is subject to discipline under the Act for, *inter alia*, "[e]ngaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public" (225 ILCS 60/22(A)(5) (West 2014)), "[p]rescribing, selling, administering, distributing, giving or self-administering any drug classified as a controlled substance (designated product) or narcotic for other than medically accepted therapeutic purposes" (225 ILCS 60/22(A)(17) (West 2014)), and "[v]iolating state or federal laws or regulations relating to controlled substances, legend drugs, or ephedra as defined in the Ephedra Prohibition Act" (225 ILCS 60/22(A)(33) (West 2014)). Clearly, the actions leading to the 2011 DEA order are the same or similar to these grounds for discipline under section 22(A) of the Act.

¶ 56 For the foregoing reasons, we affirm the Department's finding that plaintiff violated sections 22(A)(9) and 22(A)(34) of the Act.

¶ 57 C. Discipline

¶ 58 Finally, we consider plaintiff's request that we reverse the Department's decision to indefinitely suspend his medical license for a minimum of three years. For the following reasons—specifically because other violations were reversed on administrative review—we

remand this matter to the Department for reconsideration of plaintiff's discipline for his confirmed violations of sections 22(A)(9) and 22(A)(34) of the Act.

¶ 59 In general, a reviewing court defers to the administrative agency's expertise and experience in determining what sanction is appropriate to protect the public interest. *Massa v. Department of Registration & Education*, 116 Ill. 2d 376, 388 (1987). A reviewing court will not interfere with an agency's decision to impose a particular sanction unless the decision is unreasonable, arbitrary or unrelated to the purpose of the relevant statute. *Singh v. Department of Professional Regulation*, 252 Ill. App. 3d 859, 870 (1993).

¶ 60 In light of this deference, many cases have addressed the proper course of action for a reviewing court when some—but not all—of the violations supporting a particular sanction have been overturned upon judicial administrative review. Thus, in *Basketfield v. Police Board of City of Chicago*, 56 Ill. 2d 351, 361 (1974), our supreme court held that where the most serious charges cannot be sustained, and in "fundamental fairness" the court believes that the sanction imposed might well differ if only the charges that have been sustained formed the basis for any disciplinary action, the matter should be remanded to the administrative agency to reconsider the appropriate disciplinary action to be taken with respect to the sustained charges. See also, *Taylor v. Police Board of City of Chicago*, 2011 IL App (1st) 101156, ¶ 53 (remand for reconsideration of sanction imposed where only lesser charges were sustained); *Obasi v. Department of Professional Regulation*, 266 Ill. App. 3d 693, 705 (1994) (remand for reconsideration of sanction where some, but not all charges sustained); *Kreiser v. Police Board of City of Chicago*, 69 Ill. 2d 27, 31 (1977) (same).

¶ 61 In other cases, remand for reconsideration has been deemed unnecessary where the more serious charges have been upheld and the reviewing court determines that the sanction imposed

is appropriate for those charges. See *Tate v. Police Board of City of Chicago*, 241 Ill. App. 3d 927, 936 (1993); *Douglas v. Daniels*, 64 Ill. App. 3d 1022, 1029 (1978); *Mobley v. Conlisk*, 59 Ill. App. 3d 1031, 1041 (1978).

¶ 62 Here, the Department based its discipline on the following aggravating factors: (1) the seriousness of the offenses; (2) the presence of multiple offences; (3) plaintiff's prior disciplinary history; and (4) plaintiff's lack of contrition. With the exception of plaintiff's prior history, the Department's discussion of these aggravating factors relied extensively upon its findings that plaintiff had committed six violations of four separate subsections of section 22(A) of the Act. However, as a result of the relief that plaintiff has received in this action for administrative review, fully half of those statutory violations have now been reversed.

¶ 63 We do not specifically find that the remaining violations are greater or lesser than those that have been overturned, as all of the violations originally found by the Department related to plaintiff's failure to report the 2007 and 2011 DEA orders. We do note, however, that the number and proportion of the statutory violations that have been overturned in this case is much greater than in those decisions cited above that have concluded that a remand for reconsideration was unnecessary. Moreover, we do find—based upon the record before us and in "fundamental fairness"—that the sanction imposed *might* have been different if the basis for plaintiff's discipline consisted of only his single violation of sections 22(A)(9) and his two violations of 22(A)(34) of the Act. *Basketfield*, 56 Ill. 2d at 361. We therefore remand this matter to the Department for reconsideration of the sanction to be imposed upon plaintiff. This result comports with a "long line of authorities [that] have held that the determination of the appropriate sanction is one to be made by the agency, not the courts." *Momney v. Edgar*, 207 Ill. App. 3d 26, 29

(1990). We express no opinion on what, if any, modification to the discipline should be made in light of reversal of some of the violations on administrative review.

¶ 64 III. CONCLUSION

¶ 65 For the foregoing reasons, we affirm the circuit court's decision to confirm the Department's conclusion that plaintiff violated sections 22(A)(9) and 22(A)(34) of the Act, and remand this matter to the Department for reconsideration of the appropriate discipline for those confirmed violations.

¶ 66 Circuit court affirmed in part, reversed in part; Department's decision confirmed in part, reversed in part, and cause remanded.