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Summary of Nassiri v. Chiropractic Physician's Bd., 130 Nev. Adv. Op. 27

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ADMINISTRATIVE LAW – STANDARD OF PROOF

Summary

The Court determined two issues: 1) whether NRS 233B.135 of the Nevada Administrative Procedure Act sets out a standard of judicial review or a standard of proof, and 2) what standard of proof is required for state agencies in adjudicative hearings in the absence of a specific statutory mandate.

Disposition

NRS 233B.135 only sets forth a standard of judicial review. The standard of proof in an administrative adjudication is determined by the standard set out in the agency's governing statutes. In the absence of a specific statutory mandate, the standard can be no less than the preponderance-of-the-evidence standard.

Factual and Procedural History

Appellants, Drs. Obteen Nassiri and Edward Johnson, were licensed chiropractic physicians in Nevada, with Johnson working as Nassiri's employee. Johnson later purchased the practice from Nassiri. An insurance company reported that Nassiri and Johnson may have engaged in unprofessional conduct, leading the Chiropractic Physicians' Board of Nevada to file complaints for disciplinary action, charging them with unlawfully referring patients to other physicians, unlawful fee splitting, inaccurate record keeping, fraud, and employing unregistered assistants. After considering "substantial, credible, reliable, and probative evidence," the Board found that Nassiri and Johnson had violated multiple provisions of NRS 634 and NAC 634².

Nassiri and Johnson petitioned for district court judicial review, arguing that the Board used the wrong standard of proof in violation of their equal protection and due process rights. The district court affirmed all the substantive issues now on appeal, concluding that the Board's determinations "must be supported by substantial evidence because NRS Chapter 634 does not set forth a specific standard of proof." Appellants appealed.

Discussion

Standard of Review

Factual determinations of administrative agencies are reviewed for clear error "in view of the reliable, probative and substantial evidence on the whole record," or for an "abuse of

¹ By Danielle Barraza.

² The Board revoked Nassiri's license, ordered him to pay 80 percent of the Board's fees and costs, fined him \$5,000 for each violation, and prohibited him from owning any interest in a chiropractic practice until he regains his license. The Board suspended Johnson's license for one year with conditions ordered him to pay 20 percent of the Board's fees and costs, fined him \$1,000 for each violation, and ordered probation for three years to begin once the suspension was lifted.

discretion.”³ Factual findings are only overturned if they are not supported by substantial evidence, meaning evidence that a reasonable mind could accept as adequately supporting the conclusions.⁴ The Court decides purely legal issues de novo, without deference to the agency’s conclusions of law.⁵

Standard of proof at administrative agency proceedings

Appellants claimed that the Board improperly used the “substantial evidence” standard from NRS 233B.135 to determine Nassiri and Johnson committed professional misconduct. Appellants asserted that the NRS standard is lower than that used to discipline medical doctors, and the incongruity is unconstitutional. The Court disagreed, noting the Appellants misunderstood the concept of “standard of proof,” first by mistaking it with “burden of proof” and second, with “standard of review.” The Court explained the “substantial evidence standard” in NRS 233B.135 is a standard of judicial review⁷, not of fact-finding. Under this standard, the reviewing court must determine whether the fact-finder made its decision based on sufficient, worthy evidence by looking at the quality and quantity of the evidence. NRS 233B.135’s standard of review applies to courts’ secondary review and not to the determinations of administrative agencies.

The Court then clarified that the standard of proof in administrative adjudications should be the standard set out in the agency’s governing statutes.⁹ The Court noted that in prior decisions where governing statutes provided no standard, it has held that the correct standard was the “general civil standard,” i.e., the preponderance-of-the-evidence standard.¹¹ Therefore, as the governing statutes here provided no standard of proof, the Court determined that the Board was required to use at least a preponderance-of-the-evidence standard.

The Court next looked to what standard of proof the Board employed. Noting a lack of evidence the Board used a lower standard, the Court held that the Board did apply a preponderance standard and “did not err in finding that appellants committed violations warranting professional discipline.”

Finally, based on its finding that the Board used the correct standard of proof, the Court dismissed the appellants’ equal protection argument as moot, noting medical physicians also use a preponderance-of-the-evidence standard of proof for disciplinary hearings.¹²

Conclusion

NRS 233B.135 provides a standard for judicial review, not a standard of proof. In the absence of a specific statutory mandate for standard of proof, state agencies in adjudicative hearings must use at least the preponderance-of-the-evidence standard.

³ NEV. REV. STAT. § 233B.135(3)(e), (f).

⁴ *Elizondo v. Hood Mach., Inc.*, 129 Nev. __, __, 312 P.3d 479, 482 (2013).

⁵ *Id.*

⁷ NEV. REV. STAT. § 233B.135(3)(e) states that the “court may remand or affirm the final decision or set it aside in whole or in part . . . because the final decision of the agency is: . . . [c]learly erroneous in view of the reliable, probative and substantial evidence on the whole record.”

⁹ *See Gilman v. State Bd. Of Veterinary Med. Exam’rs*, 120 Nev. 263, 274, 89 P.3d 1000, 1008 (2004).

¹¹ *J.D. Constr.*, 126 Nev. at __, 240 P.3d at 1043.

¹² *See NEV. REV. STAT. § 630.346(2).*