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### Tate v. State, Bd. of Med. Exam'rs, 131 Nev. Adv. Op. 67 (Sep. 10, 2015)

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*Nevada Law Journal*

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ADMINISTRATIVE LAW: CONSTITUTIONAL CHALLENGE OF STATUTE

**Summary**

The Court considers an appeal from a district court order denying an injunction challenging the constitutionality of a statute prohibiting stay of Board of Medical Examiners decision. The Court reversed and remanded the district court's order because the statute prohibiting district courts from entering a stay of a decision of the Board of Medical Examiners ("the Board") pending judicial review violates the separation of powers doctrine as a matter of first impression.

**Background**

Appellant, James Tate Jr., filed petition at the Eighth Judicial District Court for judicial review of the Board of Medical Examiners decision of suspending his license and issuing public reprimand. Dr. Tate also requested for preliminary injunction to stay the sanctions and prevent the Board from filing a report with the National Practitioner Data Bank while judicial review was pending. The district court denied Dr. Tate's request for injunction, stated that NRS 630.356(2)<sup>2</sup> precluded such action. Dr. Tate appealed.

**Discussion**

On appeal, Dr. Tate claims that the statute conflicts with the judicial powers articulated in the Nevada Constitution Article 6, Section 6. The Board argues that courts have no inherent authority over administrative actions and that any authority given by statute is likewise subject to statutory limitations. The Court reviews whether the statute is unconstitutional as a question of law, de novo.

The Court reiterated that statutes should be construed so as to avoid absurd result and in favor of the legislative power.<sup>3</sup> Once a court gains jurisdiction of a case from an administrative agency, it has the power to preserve the status quo and maintain and protect the subject matter of the suit as it existed at the time the appeal was taken. Here, the district court has the power to determine whether an aggrieved party is entitled to the relief sought on review pursuant to N.R.S. 233B.010. As the legislative intent for enacting the APA was to set forth the procedural requirements for a petition for judicial review in order to invoke the district court's jurisdiction.<sup>4</sup>The Court adopted the Supreme Court of Kentucky's view in *Smothers v. Lewis*<sup>5</sup>

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<sup>1</sup> By Nancy Snow.

<sup>2</sup> NEV. REV. STAT. § 630.356(2) states: "Any person aggrieved by a final order of the Board is entitled to judicial review of the Board's order; every order that imposes a sanction against a licensee pursuant to subsection 4 or 5 of NRS 630.352 or any regulation of the Board is effective from the date the Secretary-Treasurer certifies the order until the date the order is modified or reverse by a final judgment of the court."

<sup>3</sup> See *State v. Tatalovich*, 129 Nev., Adv. Op. 61 309 P.3d 43, 44 (2013); see also *Galloway v. Truesdell*, 83 Nev. 13, 20, 422 P.2d 237, 242 (1967).

<sup>4</sup> The Nevada Administrative Procedure Act (APA) codified in NRS Chapter 233B, governs the judicial review of

on the issue of whether a statutory prohibition against stays violates the separation of power doctrine, holding that a statute prohibiting any stay of a board's order pending judicial review violates the separation of powers doctrine. Here, because the Legislature gave physicians the right to contest and the district courts the power to review the Board's final decision, simultaneously extinguishing the court's ability to impose a stay where the progression of sanction would impair or eliminate the purpose of seeking judicial review.

### **Conclusion**

Because NRS 630.356(2) bars a district court's ability to grant injunctive relief while judicial review is pending, the Court found this prohibition is a legislative encroachment on the power of the judiciary in violation of the separation of powers doctrine, thus the statute is unconstitutional. The Court reversed the ruling of the district court and remanded the matter to the district court for further proceeding.

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final administrative agency decisions.

<sup>5</sup> *Smother v. Lewis*, 672 S.W.2d 62 (Ky. 1984).