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Sarfo v. State Bd. Of Medical Examiners, 134 Nev. Adv. Op. 85 (Nov. 1, 2018)

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ADMINISTRATIVE LAW: DUE PROCESS

Summary

The Court determined that when a complaint is filed with the Nevada State Board of Medical Examiners against a physician, the physician's due process rights do not attach to the fact-finding role of the administrative agency.

Background

The Nevada State Board of Medical Examiners (Board) sent Dr. Kofi Sarfo a letter to inform him that a complaint was filed against him. The letter did not identify the claims or identify the complainant, but did include an order requesting Dr. Sarfo to produce medical records. Dr. Sarfo refused to comply and filed a motion for injunctive relief arguing that the Board violated his due process rights by keeping the complainant and claims confidential.

The district court denied Dr. Sarfo's motion concluding that his due process rights were not violated because the order of which he contests is appropriate under NRS 630.140(1),² 630.311(1),³ and 630.336(4).⁴ Moreover, to issue its order, the court relied on *Hernandez v. Bennett-Haron*⁵ to find that the Board's Investigative Committee (IC) has no authority to adjudicate legal rights because its only tasks are to gather facts and investigate whether there is any merit to support a complaint filed against a physician. This appeal followed.

Discussion

The district court did not abuse its discretion in denying Dr. Sarfo's motion for a preliminary injunction

The Nevada Constitution requires that "[n]o person shall be deprived of life, liberty, or property, without the due process of law."⁶ Dr. Sarfo argues practicing medicine is a property right and depriving him of the complaint's details does not allow him the to adequately respond.

This complaint is initial and does not include disciplinary powers until it reaches a formal complaint.⁷ *Hernandez* concluded that when a coroner was investigating whether a police officer used excessive force, because the coroner is a fact-finder and not charged with disciplinary proceedings, the process was not subject to due process rights.⁸ Like *Hernandez*, a Board IC member is not involved in disciplinary proceedings.

¹ By Nathaniel Saxe.

² NEV. REV. STAT. § 630.140(1) (2017).

³ NEV. REV. STAT. § 630.311(2) (2017).

⁴ NEV. REV. STAT. § 630.336 (4) (2017).

⁵ 128 Nev. 880, 287 P.3d 305 (2012).

⁶ NEV. CONST. art. 1, § 8(5).

⁷ See NEV. REV. STAT. § 630.311(2).

⁸ *Hernandez*, 128 Nev. 880, 287 P.3d 305 at 313-314.

The Board's interpretation of NRS 630.336 is reasonable and within the plain language of the statute.

Dr. Sarfo argues the Court should interpret NRS 630.336 to mean all documents should be confidential from non-related parties because of the legislature's intent to "protect licensees from reputational damage." This statute is unambiguous and a reasonable interpretation of the statute does not require an exception for the physician for complainant or complaint confidentiality.

The Court also considered Dr. Sarfo's questioning of all of the patients whose records were requested as a demonstration of why confidentiality is necessary to avoid hesitation when reporting malpractice.

The Court lacks jurisdiction to consider the district court's order awarding attorney fees and costs to the Board.

For the Court to have jurisdiction to consider a reversal, a notice of appeal must be filed.⁹ In the present case, the Court lacks jurisdiction because the order awarding attorney's fees and costs was entered nearly six months after the notice of appeal was filed and because there was no amended notice of appeal.

Conclusion

The Court held that the due process rights of physicians do not attach to fact-finding investigations by the Board of Medical Examiners. The disciplinary and investigative portions of the agency are sufficiently separate based on NRS 630.352(1). Moreover, the Court affirmed the district court ruling denying injunctive relief, but concluded it lacked jurisdiction to consider attorney fees and costs.

⁹ See NRAP 3(a)(1); NRAP 4(a)(1).