



Motion to correct error, errors in correction



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Persons subject to adverse administrative actions against their interests to practice a profession are afforded the right to appeal such decisions into the judiciary. These inherent rights of appeal protect the interests of all persons and parties involved in the proceedings. Circuit courts and appellate courts generally review regulatory board actions for error on legal issues while leaving factual findings to the administrative tribunal. Boards also possess the right to appeal adverse opinions from the circuit courts, again to ensure judicial oversight of legal determinations and preservation of interests. Consider the following.

An individual (Respondent) was licensed as a mental health counselor in 1999. In 2009, a complaint was filed by her former employer alleging a boundary violation with a particular patient. In 2011, the Office of the Attorney General (OAG) filed a petition for an emergency suspension. The Behavioral Health and Human Services Board (Board) held a hearing on the emergency suspension petition and, in spite of a lack of a quorum, suspended Respondent's license for a period of 90 days. The Board later rescinded its emergency suspension order based on the lack of a quorum.

Thereafter, the OAG pursued its original

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administrative complaint against Respondent, and a hearing was held before the Board in January 2012. After resolving some procedural issues regarding witness and evidentiary matters, the Board found multiple violations of statute and rule and revoked Respondent's license. The Respondent filed for judicial review. In spite of the circuit court's expression of disappointment in the testimony of the OAG investigator, as well as questions over the credibility of the relevant patient, whose mental illness created "suspect" testimony, they concluded that substantial evidence supported the Board's findings and affirmed the revocation of the license.

Next, the Respondent filed a motion before the circuit court to correct error. The court reexamined the case and was troubled by the harshness of the sanction. In March 2013, the circuit court issued a second order that concluded that the revocation of licensure was too severe in light of the record. In reviewing the procedural nature of the case, the court noted the initial emergency suspension vote without a quorum, the denial of

a request for a continuance by the Respondent, the credibility of witnesses, and the fact that the hearing did not conclude until late into the evening, resulting in a shortened closing argument by the Respondent. Overall, the court questioned the “fairness” of the proceedings and concluded that the penalty decision of revocation was arbitrary and capricious, an abuse of discretion, and not in accordance with the law. The court reversed the sanction determination of revocation and remanded the matter back to the Board to impose a lesser sanction or hold a new hearing. The Board appealed this circuit court ruling.

The appellate court first addressed the limits on judicial review of a Board decision, noting that deference is granted to the expertise of the Board. Also, the courts will defer to the findings of fact of the Board and not disturb a ruling simply because “we may have reached a different result.” Relief from the court is limited to prejudicial conduct by the Board resulting in action(s) that are:

- Arbitrary, capricious, and an abuse of discretion
- Contrary to a constitutional right
- In excess of statutory authority
- Without observance of procedure required by law
- Unsupported by substantial evidence

The court next reviewed the authority of the Board to assess sanctions against practitioners, referencing numerous options up to and including permanent revocation of licensure. Indeed, the appellate court noted that the circuit court did not disturb the Board determinations that

resulted in the sanction but was troubled only by the severity of the sanction. The circuit court ordered a lesser sanction or, alternatively, a new hearing. On appeal, the court focused on the lower court’s determination that revocation was arbitrary and capricious in light of several factors, including:

Absence of prior discipline

To this, the appellate court noted that nothing under Indiana law requires progressive discipline, citing a nursing case that resulted in the revocation of licensure of a nurse with more than 20 years of unblemished practice. Thus, the court rejected any notion of a legally mandated progressive discipline system.

Improper use of statute related to grounds for discipline

In short, the appellate court here referenced that the circuit court provided no explanation for its finding that the statute was improperly used. The appellate court distinguished a case cited by the lower court, finding that such jurisprudence was decided under an entirely different statute with an entirely different set of facts. As a rule, courts grant deference to the reasonable interpretation of the statute such Board is empowered to enforce.

Credibility of state’s witness

The lower court was concerned with the credibility of the patient’s testimony and questioned whether the Board disregarded the testimony of the Respondent. But the appellate court emphasized that judging witness credibility and weighing evidence was not within the purview of the lower court but rather for the Board to determine.

Other factors leading toward a reasonable perception of unfairness

Regarding a perception of unfairness, the appellate court referred to the fact that the Respondent in this case has the burden of demonstrating the invalidity of the Board action. In order to be entitled to relief, the Respondent must show he or she has been prejudiced by an agency action. According to the appellate court, “although [Respondent] may not have received perfect proceedings, we are confident she received fair proceedings.”

A lack of a standard to determine the appropriate sanction

Finally, the Respondent argued that there was a lack of standard guiding the appropriate sanction under the circumstances and cited a previous judicial case in support of this position. But the appellate court distinguished the cited case, noting that such opinion says nothing about a public standard for imposing sanction. In fact, the Indiana Supreme Court has recognized that “judicial inquiries into the private motivation or reasoning of administrative decision makers is a substantial intrusion into the functions of the other branches of government.” However, this disciplinary authority is not unbridled and boards are required under the Indiana Code to provide some level of consistency when imposing sanctions. In light of the evidence, the appellate court found that the circuit court “improperly substituted its judgment for that of the Board when it determined that the revocation was too severe a sanction.”

Based upon this analysis, the appellate court reversed the lower court and found that the Board afforded the Respondent with a fair proceeding and acted within its authority to revoke the Respondent's license.

Many important issues are addressed in this opinion, including the requirement that courts defer to the findings of the agency/board and not substitute their judgment. Deference is an important principle that recognizes the expertise and authority of the board to make factual findings and interpretations of the law with limited rights of the courts to modify findings. In this case, the Board acted within its scope of sanction authority and, absent legal error, such conclusions should be upheld. Merely because a court may not agree with the sanction(s) does not substantiate a basis for reversal.

Behavioral Health and Human Services Licensing Board v. Williams, 5 N.E.3d 452, 2014 Ind. App. LEXIS 108 (Ct. App. IN)