

IN THE SUPREME COURT OF THE STATE OF NEVADA

MOHAMMAD HASSAN FANI-SALEK,
M.D.,
Appellant,


vs.

BOARD OF MEDICAL EXAMINERS OF
THE STATE OF NEVADA; JAVAID
ANWAR, M.D.; JEAN STOESS, MA;
CINDY LAMERSON, M.D.; MARLENE
J. KIRCH; BENJAMIN J. RODRIGUEZ,
M.D.; AND S. DANIEL MCBRIDE, M.D.,
Respondents.

No. 48522

FILED

MAY 28 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

The parties are familiar with the facts, and we do not recount them except as pertinent to this disposition.

In this appeal, this court must determine whether respondent Board of Medical Examiners of the State of Nevada's decision to revoke appellant Doctor Mohammad Hassan Fani-Salek's license to practice medicine was arbitrary or capricious. We conclude that the Board's decision was not arbitrary or capricious because substantial evidence demonstrated that Dr. Fani-Salek's medical license was not lawfully acquired in the first place.

“This court has previously noted that in reviewing an administrative decision, this court’s role is ‘identical to that of the district court.’”¹ We must “review the evidence presented to the agency in order to determine whether the agency’s decision was arbitrary or capricious and was thus an abuse of the agency’s discretion.”²

Dr. Fani-Salek argues that the Board’s decision to revoke his medical license was arbitrary or capricious, and thus, an abuse of discretion because the Board relied upon uncorroborated hearsay evidence. In Real Estate Division v. Jones, we concluded that the “revocation or suspension of a lawfully acquired license constitutes an abuse of discretion by the disciplining authority unless the record reflects support in the form of sufficient competent evidence. Uncorroborated hearsay evidence does not measure up to the required standard.”³

In this case, the Board’s decision to revoke Dr. Fani-Salek’s license was based largely upon several letters it received from Dr. Tabatabaei Nejad, the director of educational affairs and graduate studies at Shaheed Beheshti University of Medical Sciences and Health Services. Dr. Nejad’s letters suggest that Dr. Fani-Salek failed to complete his educational requirements and has acquired his Nevada medical license

¹Weaver v. State, Dep’t of Motor Vehicles, 121 Nev. 494, 498, 197 P.3d 193, 196 (2005) (quoting United Exposition Service Co. v. SIIS, 109 Nev. 421, 423, 851 P.2d 423, 424 (1993)).

²Id. (quoting United Exposition Service Co., 109 Nev. at 423, 851 P.2d at 424).

³98 Nev. 260, 264, 645 P.2d 1371, 1373 (1982) (citing Biegler v. Nevada Real Est. Div., 95 Nev. 691, 695, 601 P.2d 419, 422 (1979)).

through the use of false or misleading documents. Dr. Fani-Salek argues that Dr. Nejad's letters constitute uncorroborated hearsay evidence, and thus, the Board's reliance upon these letters, in revoking his medical license, was an abuse of discretion.

We need not address whether these letters constitute uncorroborated hearsay evidence because substantial evidence supports the Board's finding that Dr. Fani-Salek's medical license was not lawfully acquired in the first place. Under Nevada law, the revocation or suspension of a license constitutes an abuse of discretion only when the license was lawfully acquired.⁴ In this case, Dr. Fani-Salek admitted to violating the Board's direct source verification policy by having his transcripts sent through his parents rather than directly from the medical school. In addition, Dr. Fani-Salek provided the Board with misleading information regarding his whereabouts from 1991 to 1995. Therefore, we conclude that there is substantial evidence in the record to support the Board's finding that Dr. Fani-Salek violated NRS 630.304(1) by acquiring his medical license through the use of false or misleading documents.⁵ Accordingly, we conclude the decision to revoke Dr. Fani-Salek's license was not arbitrary or capricious.

⁴See *id.* (concluding that "revocation or suspension of a lawfully acquired license constitutes an abuse of discretion by the disciplining authority") (emphasis added); cf. *Schireson v. Shafer*, 47 A.2d 665, 667 (Pa. 1946) (concluding that "[t]he power of the state to require a license implies the power to revoke a license which has been improperly issued").

⁵See NRS 630.304(1).

Dr. Fani-Salek also argues that judicial review is warranted because the Board improperly shifted the burden of proof and required him to prove that he graduated from medical school.⁶ The standards for revocation of a medical license state in pertinent part:

2. The Board shall not revoke a license . . . unless the Board finds by a preponderance of the evidence that the licensee committed a material violation of:

(a) Any provision of NRS 630.161 or 630.301 to 630.3065, inclusive; or

(b) Any condition, restriction or limitation imposed on the license.⁷

Specifically, NRS 630.165(5) provides that “[t]he applicant bears the burden of proving and documenting his qualifications for licensure.”⁸ In this case, the Board was concerned with the documents and affidavits submitted by Dr. Fani-Salek supporting his application for licensure. Therefore, we conclude that the Board did not improperly shift the burden of proof because the initial burden was on Dr. Fani-Salek to authenticate his documentation and qualifications for licensure.⁹ This he failed to do. Accordingly we,

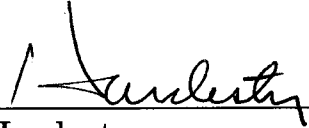
⁶See NRS 630.348.

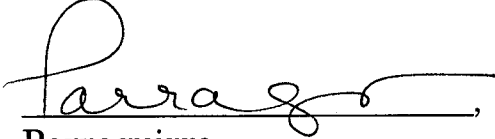
⁷NRS 630.348(2).

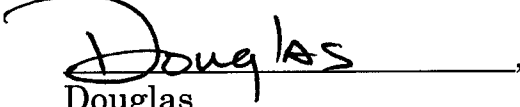
⁸NRS 630.165(5).

⁹Id.

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Douglas W. Herndon, District Judge
Ara H. Shirinian, Settlement Judge
Kolesar & Leatham, Chtd.
Bonnie S. Brand
Eighth District Court Clerk