IN THE SUPREME COURT OF THE STATE OF NEVADA

NAVNEET SHARDA, M.D.,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE ALLAN R. EARL, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA BOARD OF MEDICAL EXAMINERS,
Real Party in Interest.

No. 56242

ORDER DISMISSING PETITION AS MOOT

This original petition for a writ of mandamus challenges a district court order denying a motion for a temporary restraining order, seeking to prevent real party in interest, the State of Nevada Board of Medical Examiners, from reporting its decision that petitioner violated Nevada's Medical Practice Act, NRS Chapter 630, to the National Practitioner Database, pending the outcome of petitioner's appeal of that decision to the district court.

According to petitioner, NRS 630.356(2) precludes the district court from issuing a temporary restraining order pending the outcome of his appeal to the district court of the Board's decision. Consequently, after petitioner's motion for a temporary restraining order was denied, petitioner filed this petition challenging the constitutionality of NRS 630.356(2) and seeking this court's intervention by way of extraordinary writ relief to prevent the Board from reporting its decision to the National Practitioner Database. Thereafter, this court entered an order directing

petitioner to show cause why this petition should not be dismissed as moot, since it seemed likely that the Board had already submitted its report to the National Practitioner Database. University Sys. v. Nevadans for Sound Gov't, 120 Nev. 712, 720, 100 P.3d 179, 186 (2004) (stating that "'the duty of every judicial tribunal is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles of law which cannot affect the matter in issue before it'" (quoting NCAA v. University of Nevada, 97 Nev. 56, 57, 624 P.2d 10, 10 (1981))).

In his response to this court's show cause order, petitioner acknowledges that the Board has already reported its decision to the National Practitioner Database, but asserts that the petition is nonetheless not moot because it falls within an exception to the mootness doctrine for issues capable of repetition yet evading review. See Traffic Control Servs. v. United Rentals, 120 Nev. 168, 171-72, 87 P.3d 1054, 1057 (2004) (recognizing that the "capable of repetition, yet evading review" exception to the mootness doctrine applies when the duration of the challenged action is "relatively short," and there is a "likelihood that a similar issue will arise in the future"); State of Nevada v. Glusman, 98 Nev. 412, 418, 651 P.2d 639, 643 (1982) (recognizing that it is within this court's inherent discretion "to consider issues of substantial public importance which are likely to recur," despite any intervening events that have rendered the matters moot). Additionally, petitioner asserts that this court could still consider this petition and declare NRS 630.356(2) unconstitutional, a determination pursuant to which the district court

could direct the Board to retract its report to the National Practitioner Database.[1]

Having reviewed the petition, petitioner's response to this court's show cause order, and the supporting documentation,[2] we conclude that this petition is moot, as petitioner can no longer obtain the relief that he ultimately sought—preventing the Board from submitting its report to the National Practitioner Database. Nevadans for Sound Gov't, 120 Nev. at 720, 100 P.3d at 186. Moreover, it is not clear that this issue fits firmly

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[1]Petitioner relies on a copy of the National Practitioner Database Guidebook to support his contention that the Board can retract its report. But the Guidebook suggests that the Board can retract its report if, for example, the Board's decision was "overturned by a State Court." As any determination by this court regarding the validity of NRS 630.356(2) would not fall within that rule, it is not clear that declaring the statute unconstitutional would lead to the result that petitioner desires.

[2]On July 29, 2010, petitioner filed a motion requesting that this court take judicial notice of an order of the United States District Court, District of Nevada, entered in a separate case. Having considered the motion, we deny it, since petitioner is essentially requesting that this court take judicial notice of certain legal analyses set forth in the order, which do not fit within the matters subject to judicial notice. See NRS 47.130 (setting forth the matters of fact subject to judicial notice); NRS 47.140 (setting forth the matters of law subject to judicial notice); see also SIIS v. United Exposition Services Co., 109 Nev. 28, 30, 846 P.2d 294, 295 (1993) (noting that this court reviews questions of law de novo); accord Towbin v. Bd. of Exam. of Psychologists, 801 A.2d 851, 867 (Conn. App. Ct. 2002) (recognizing that trial court decisions are not precedents binding on appellate courts); see also Kelly v. TRPA, 109 Nev. 638, 653 n.18, 855 P.2d 1027, 1037 n.18 (1993) (recognizing that judicial notice of matters that the parties highly disputed in the district court and that are not part of the record on appeal is generally inappropriate) (citing In re Marriage of Holder, 484 N.E.2d 485, 490 (Ill. App. Ct. 1985)).

within the exception to the mootness doctrine for issues capable of repetition yet evading review, as petitioner could have sought a stay of the Board's order in this court but declined to do so. See Stephens Media v. Dist. Ct., 125 Nev. ___, ___, 221 P.3d 1240, 1247 (2009).

Further, to the extent that petitioner requests that this court nevertheless determine the constitutionality of NRS 630.356(2), at this point the district court is in at least as good a position as this court to make that determination, and this court's extraordinary intervention is thus unwarranted. See NRS 34.170; NRAP 21(b)(1); Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

Accordingly, we

ORDER the petition DISMISSED.

/ Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Allan R. Earl, District Judge
Law Office of Jacob L. Hafter & Associates
Lyn E. Beggs
The Eighth District Court Clerk