

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NEVADA STATE BOARD OF  
MASSAGE THERAPY,  
Appellant,  
vs.  
CONNIE WRIGHT,  
Respondent.

No. 81542-COA

FILED

MAY 27 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

The Nevada State Board of Massage Therapy appeals from a district court order granting Connie Wright's petition for judicial review. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

Wright applied to the Nevada State Board of Massage Therapy (Board) for a reflexologist license.<sup>1</sup> The Board sent Wright a letter notifying her that the Board was going to consider her character and alleged misconduct at a public meeting. The letter stated the time and place of the meeting and said Wright could bring counsel and present evidence on her own behalf. The letter also stated it acted as notice and that it was provided under NRS 241.033.<sup>2</sup> Wright attended the meeting with her counsel. The Board held an open hearing regarding Wright's application at Wright's request and because the Board discussed alleged misconduct. After the hearing, the Board denied Wright's application. Wright then petitioned the district court for judicial review and the Board opposed.

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<sup>1</sup>We do not recount the facts except as necessary to our disposition.

<sup>2</sup>The Board's notice given pursuant to NRS 241.033 was necessary to comply with Nevada's open meeting laws.

The district court granted Wright's petition for judicial review because it found the hearing was contested. The district court determined that the Board misapplied the law of another state at the hearing, and therefore, it needed to remand the matter for the Board to apply the correct law. It also found that Wright's application was not administratively decided on the merits and that the State's arguments applying *Private Investigator's Licensing Bd. v. Atherley*, 98 Nev. 514, 654 P.2d 1019 (1982) were unpersuasive.

On appeal, the State argues that the district court erred by denying its motion to dismiss Wright's petition for judicial review because Wright did not have a contested case before the Board. Relying on *Atherley*, the State first argues that the district court lacked jurisdiction to hear Wright's petition for judicial review. It notes that no provision in NRS Chapter 640C requires notice and an opportunity for a hearing before an applicant is granted or denied a license, and therefore, judicial review is not available pursuant to NRS 233B.127. Next, the State argues that the notice pursuant to Nevada's Open Meeting Law is not the notice required for a contested case. The State points out that notice under the Open Meeting Law is found in NRS 241.033 and the notice requirements for a contested case are found in NRS 233B.121. Accordingly, the State contends the letter sent by the Board did not comply with the notice requirements of NRS 233B.121. Finally, the State proffers that substantial evidence supported the Board's denial of Wright's application and the denial was not arbitrary or capricious.

Wright argues that the district court was correct in denying the State's motion to dismiss her petition for judicial review because the Board held a contested hearing that complied with the requirements of both NRS

233B.121 and 241.033. Further, Wright argues that the Board's misapplication of Colorado law caused it to deny her application and thus was arbitrary and capricious.


We review this matter de novo because it involves statutory interpretation. *UMC Physicians' Bargaining Unit of Nev. Serv. Emps. Union v. Nev. Serv. Emps. Union/SEIU Local 1107, AFL-CIO*, 124 Nev. 84, 88, 178 P.3d 709, 712 (2008). The Administrative Procedures Act (APA) governs this matter because the proceeding involved a petition for judicial review of an administrative decision. *Washoe Cty. v. Otto*, 128 Nev. 424, 430, 282 P.3d 719, 724 (2012). However, not every administrative decision is reviewable. *Atherley*, 98 Nev. at 515, 654 P.2d at 1019. Only decisions that are in "strict compliance with the statutory requirements" are reviewable by the district court. *Kame v. Emp't Sec. Dep't*, 105 Nev. 22, 25, 769 P.2d 66, 68 (1989). The statutory requirements governing the Board's proceedings involving Wright are contained in NRS Chapter 640C.

NRS 640C.600 sets forth the requirements to obtain a license as a reflexologist in Nevada, but does not specifically provide that notice and an opportunity for a hearing are required before approving or denying a license. Additionally, NRS 622A.020(2) provides that "[a] final decision of a regulatory body approving or denying an application for issuance or renewal of a license is not a contested case for the purposes of this chapter." While we recognize that NRS 640C.710 could be interpreted as requiring notice and an opportunity for a hearing before the Board can deny the issuance of a license in a disciplinary action, NRS 622A.130(2) provides that if there are conflicts with the statutory provisions governing occupational licensing pursuant to NRS Chapter 640C and those of NRS Chapter 622A, NRS Chapter 622A controls. Therefore, the provisions of NRS 622A.020(2)

govern, and the Board's final decision denying Wright's application for a license following a hearing Wright and her counsel were invited to, but not required to attend, does not rise to the level of a contested case. Thus, Wright is not entitled to judicial review. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Elizabeth Goff Gonzalez, District Judge  
Attorney General/Carson City  
Attorney General/Las Vegas  
Kirk T. Kennedy  
Eighth District Court Clerk