IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROYAL BYRON, Appellant, vs. STATE OF NEVADA BARBERS' HEALTH & SANITATION BOARD, Respondent.	No. 87643-COA
RAY LEWIS, Appellant, vs. STATE OF NEVADA BARBERS' HEALTH & SANITATION BOARD, Respondent.	No. 87644-COA

FILED

NOV 20 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Royal Byron and Ray Lewis (collectively appellants) appeal from orders denying their respective petitions for judicial review. These matters have been consolidated. Eighth Judicial District Court, Clark County; Gloria Sturman, Judge.

Byron and Lewis are both established barbers and barber instructors in Las Vegas.[1] Byron owns and operates two barber schools: Nevada First Barber School and The Art of Barbers School. Lewis is a barber instructor at the latter school.

In June and August 2022, the Board received various complaints by current and former students at Byron's schools alleging, in relevant part, that appellants instituted unsanitary practices and

[1]We recount the facts only as necessary for our disposition.

improperly disciplined the students. As relevant here, the complaints alleged that Byron and Lewis implemented a rule requiring students to reuse Barbicide/Mar-V-Cide[2] by straining the soiled solutions through a towel and reusing them on patrons for months when the solutions were designed to be disposed of daily. The complaints also alleged that appellants implemented a rule requiring students to seek out patrons and solicit barbering services—including seeking out and transporting unhoused people in the students' personal vehicles to the schools—and that appellants deducted students' earned credit hours as a method of discipline for violations of school rules.[3] Attached as exhibits to the complaints were photographs purportedly depicting the straining of soiled solutions, screenshots of emails from the school, and records reflecting a discrepancy between the students' hours worked and their total hours earned. In addition to these complaints, the students petitioned the Board for the release of their earned hours and permission to transfer to different barber schools.

The Board's Vice President, Joe Foley, investigated the complaining students' allegations by speaking with those students and

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[2]Barbicide is a disinfectant solution used commonly in beauty salons, barbershops, and hairstyling establishments. When used correctly, Barbicide is effective against HIV-1 (the AIDS virus), influenza, the hepatitis B virus, and the hepatitis C virus, as well as other viruses, germs, fungi, and bacteria. Mar-V-Cide is a similar solution to Barbicide, but it is slightly stronger.

[3]Under NAC 643.660, barber school students must earn 1,500 hours of instruction from a barber instructor, subject to various specific requirements. Students must earn their requisite hours and take a licensing examination within one year of enrolling in barber school. NAC 643.660(5).

reviewing the exhibits attached to their complaints. However, no Board member conducted a physical inspection of either of Byron's schools or presented Byron with a list of violations discovered during an inspection. Instead, following Foley's investigation, the Board filed administrative complaints against Byron and Lewis in July 2022.[4] The Board filed second amended complaints in early August 2022, which were the operative complaints at the time of the disciplinary hearing, that charged appellants with violating various provisions of NRS Chapter 643 and NAC Chapter 643.

This matter proceeded to a four-day disciplinary hearing in front of a three-person panel.[5] The prosecuting Board presented its case by calling the students who submitted complaints as well as Antinette Maestas, the Board's secretary and treasurer. The students testified that they would reuse Barbicide/Mar-V-Cide "quite frequently" and described the school's policy of straining the soiled solutions through a towel into a bucket to reuse on patrons. One student explained that she did not attempt to challenge this rule because it would result in the school deducting her earned credit hours. Other students testified that they lost previously earned hours or were not awarded hours for purportedly arbitrary reasons.

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[4]The Board also filed a complaint against non-party Henry Dollar, who the Board later determined violated no provisions of NRS Chapter 643 or NAC Chapter 643.

[5]The hearing was not held on consecutive days, but instead took place on August 15, August 29, September 12, and October 24. Further, the hearing originally proceeded against Byron. However, after Byron's testimony, the parties stipulated that the record for the proceedings against Byron would constitute the entirety of the record for the disciplinary proceedings against Lewis as well.

Additionally, the students explained that they were required to bring their own models to school and, if they could not get a volunteer, that they were expected to find members of the unhoused community and bring them to the school as their models. The students also explained that once Byron learned of their complaints against the school, he withdrew them from the school due to a "conflict of interest," and then Byron would charge withdrawn students a reinstatement fee between $500 and $1,000.

Next, Maestas testified that the Board never authorized appellants to deduct earned student hours for violations.[6] Maestas further explained that the Board's usual practice upon receiving complaints from barber school students would be to conduct a physical inspection; however, she testified that an inspection was unnecessary in this case because Foley's meeting with the students, along with the exhibits they submitted, were sufficient for the Board to file a complaint.

During appellants' case-in-chief, Lewis confirmed that he would deduct earned student hours on "the day of the infraction" for things such as missing homework and violating school rules and regulations. As to the photographs depicting the straining of soiled solutions, Lewis explained that he strained the solutions "to show the students that they were leaving hair," but he denied that the soiled solutions were ever reused.

At the end of the third day of the disciplinary proceedings, the panel voted and found Byron to have violated six provisions of the NRS and NAC. The panel directed Byron to create a "plan of correction" to address his violations by the next hearing date and, if the plan was insufficient, the panel would then consider fines or actions against Byron.

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[6]In his testimony, Byron acknowledged that he did not reach out to the Board to confirm whether he had the authority to deduct hours.

While appellants were jointly represented by their attorney for the first three hearing days, on the fourth and final day of the proceedings appellants chose to appear *pro se*. Byron advised the panel that he did not prepare a plan of correction as requested because he did not believe that such a plan was necessary and because he did not agree with the panel's determination of his violations. Deeming this response insufficient, the panel voted to fine Byron $1,000 per violation, for a total of $6,000. The prosecuting attorney indicated that "these levels of alleged violations [were] actually pretty new to the Board" and noted that the panel's penalty would be "setting precedent" for what would be an appropriate penalty under these circumstances.

Next, the panel voted on Lewis's violations and determined that he had violated 11 provisions of the NRS and NAC. The panel voted to fine Lewis $250 per violation, for a total of $2,750. Finally, the panel awarded the Board costs not to exceed $35,000 and attorney fees not to exceed $40,000.

After appellants' disciplinary hearing concluded, the panel adjudicated the student petitions, which were listed as a separate agenda item and involved separate documentary exhibits and testimony by the students. While the students sought to have their earned hours recalculated and released to different barber schools, Byron objected that the panel did not have authority to adjudicate what was essentially a civil contract claim, and he argued that the students should not be allowed to transfer to other schools unless they became current on their tuition payments. The panel rejected Byron's request to hold the students to their tuition agreements and noted that whatever contract disputes Byron had with the students were separate issues that must be heard in a civil court.

Ultimately, the panel adjusted the hours of four former students based on what it found to be the appropriate calculations, ordered that all students' hours be released from Byron's schools, and ordered that the students be allowed to transfer to another barber school of their choice with no fee imposed.

Following the hearings, the Board issued orders consistent with the panel's oral findings and conclusions. As to Byron, the panel found by a preponderance of the evidence, in relevant part, that "without this Board's approval, [he] required students enrolled in either [school] to seek out patrons/members of the public and solicit barbering services"; "without this Board's approval [he] implemented a policy of forfeiting earned student credit hours against his students for arbitrary and capricious reasons"; and he "failed to provide the Board with adequate records of student suspensions, expulsions or student reinstatement following expulsions." The panel also denied Byron's request to enforce his contract against the students and left "any determination of any enforceable contract with the appropriate Court having jurisdiction to hear that matter."

As to Lewis, the panel found by a preponderance of the evidence, in pertinent part, that "without this Board's approval, [he] enforced a policy requiring students enrolled in [either school] to seek out patrons/members of the public and solicit barbering services"; "without this Board's approval, [he] enforced a policy of forfeiting earned student credit hours against his students for arbitrary and capricious reasons"; he "introduced, implemented, and enforced the policy requiring students enrolled in [either school] to reuse disinfectant customarily known as [Barbicide or Mar-V-Cide]"; and he "failed to provide the Board with

adequate records of student suspensions, expulsions or student reinstatement following expulsions."

The orders also imposed costs in the amount of $30,374.51 and attorney fees in the amount of $37,075.70. Byron and Lewis were each ordered to pay half these amounts, or $15,187.25 in costs and $18,537.85 in attorney fees. Appellants separately petitioned for judicial review and the district court denied both petitions.[7] Byron and Lewis both timely appealed the orders denying their petitions for judicial review, and those appeals were subsequently consolidated into the instant case.

On appeal, Byron and Lewis raise five arguments: (1) the Board abused its discretion by failing to conduct a physical inspection of the barber schools prior to filing its disciplinary complaint and conducting a disciplinary hearing; (2) the panel abused its discretion by unlawfully combining the students' administrative appeals with appellants' disciplinary hearing; (3) the panel abused its discretion by enforcing ad hoc regulations governing the instruction and discipline of barber school students; (4) the panel abused its discretion by ordering "precedent setting" fines, costs, and attorney fees; and (5) the panel exceeded its authority by adjudicating a civil dispute within the administrative hearing. Because appellants have not identified any basis for reversal, we affirm.

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[7]In its answer to appellants' petitions for judicial review, the Board conceded that both appellants were erroneously found in violation of NRS 643.185(1)(a), and that Lewis was erroneously found in violation of NRS 643.185(1)(c). As a result, the Board asserted that the total fines against Byron should be reduced to $5,000 and the fines against Lewis reduced to $2,250. The district court recognized the Board's concessions in its orders denying judicial review, and as such the court acknowledged that the Board would not impose fines as to those violations. These findings have not been challenged on appeal.

When reviewing a decision of an administrative agency, this court's role "is identical to that of the district court: to 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." *United Exposition Serv. Co. v. State Indus. Ins. Sys.*, 109 Nev. 421, 423, 851 P.2d 423, 424 (1993). This court reviews purely legal questions, including matters of statutory interpretation, de novo. *Law Offices of Barry Levinson, P.C. v. Milko*, 124 Nev. 355, 362, 184 P.3d 378, 384 (2008). This court will uphold fact-based conclusions when supported by substantial evidence. *Grover C. Dils Med. Ctr. v. Menditto*, 121 Nev. 278, 283, 112 P.3d 1093, 1097 (2005); *see also* NRS 233B.135(3)(e)-(f). "Substantial evidence" is defined as "evidence which a reasonable mind might accept as adequate to support a conclusion." *Horne v. State Indus. Ins. Sys.*, 113 Nev. 532, 537, 936 P.2d 839, 842 (1997) (internal quotation marks omitted).

Appellants fail to show that the Board was required to conduct an inspection of the barber schools prior to filing a disciplinary complaint

Appellants argue that NAC 643.525(1) required the Board to conduct a physical inspection of the barber schools prior to filing a disciplinary complaint. The Board responds that this matter was not governed by NAC 643.525(1) and that it was not required to conduct an inspection under these circumstances.

NAC 643.525(1) states, in its entirety, "[a]t the time of an inspection, the board member or agent of the board conducting the inspection shall present to the barber or owner of the barber school under inspection a list of violations discovered and the fine imposed for those violations." When interpreting a regulation, this court first looks to the regulation's plain language and construes the regulation "according to its

fair meaning and so as not to produce unreasonable results." *Dolores v. State, Emp. Sec. Div.*, 134 Nev. 258, 259, 416 P.3d 259, 261 (2018) (internal quotation marks omitted); *City of North Las Vegas v. Warburton*, 127 Nev. 682, 687, 262 P.3d 715, 718 (2011) ("These rules of statutory construction also apply to administrative regulations.").

Here, appellants do not cogently argue how NAC 643.525(1) entitles them to relief, but rather summarily assert that the Board violated their due process rights because it did not follow its laws and regulations by not conducting an inspection. Because appellants present only a conclusory assertion of error, we need not consider this claim. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (stating that this court need not consider arguments that are not cogent or lack the support of relevant authority).

Nonetheless, we note that the plain language of NAC 643.525(1) does not establish that an inspection was required in this case. NAC 643.525(1) serves as a procedural regulation that requires a Board member or agent who discovers any violations while conducting an inspection to immediately present a list of those violations with the appropriate fine. However, this regulation requires only that a Board member or agent present a list of violations and fines discovered when conducting an inspection, not that such inspections must be conducted. And the regulation does not address the presentation of violations and fines where, such as here, they resulted from complaints and evidence filed with the Board rather than from an inspection. Accordingly, we conclude that appellants have not established that the Board's failure to conduct an inspection in this case was arbitrary and capricious or an abuse of discretion, and they are not entitled to relief on that basis.

The panel did not combine the students' administrative appeals with appellants' disciplinary hearings

Appellants next argue that the panel improperly joined the students' administrative appeals with appellants' disciplinary hearings in violation of NAC 643.700.[8] Appellants contend that the improper joinder was prejudicial because it multiplied the proceedings—thereby increasing the attorney fees and costs—and because the students' testimony was unreliable.

Here, appellants' contention that the hearings were joined is belied by the record, as the panel adjudicated Byron's and Lewis's disciplinary proceedings before adjudicating the students' petitions. Further, appellants' disciplinary hearings and the students' petitions were separate agenda items and involved separate testimony and documentary evidence. Furthermore, appellants do not offer any meaningful analysis of

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[8]NAC 643.700 states, in its entirety:

> 1. A student who has been suspended or expelled from a barber school may appeal the action to the board by requesting an appeal by a letter to the secretary of the board within 10 days after the effective date of the action.
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> 2. The board will schedule a hearing of an appeal within 30 days after receiving a request.
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> 3. If the board finds that the suspension or expulsion was not justified, it will order the action reversed and the student returned to his or her course of study without prejudice.
>
> 4. The operator of a barber school who takes any action in retaliation against a student who has been returned to his or her course of study pursuant to this section is guilty of unprofessional conduct.

how NAC 643.700 compelled the panel to conduct the hearings on separate days, which is not mandated by the regulation's plain language.[9]

As to appellants' argument that the students' testimony was unreliable, this court does not reweigh the evidence, as the panel was in the best position to assess the witnesses' credibility. *See Law Offices of Barry Levinson*, 124 Nev. at 362, 184 P.3d at 384. We note that appellants were represented by counsel during the evidentiary phase of the disciplinary hearing, where they cross-examined the Board's witnesses and offered their own witnesses to refute the Board's evidence. The panel had the ability to consider and weigh all of the evidence before it. Therefore, appellants' arguments are unpersuasive.[10]

The panel did not violate appellants' rights by enforcing regulations governing the conduct of students at barber schools

Appellants also contend that the panel improperly penalized them for their "teaching methods" in the absence of any regulations governing the instruction and discipline of barber school students.

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[9]Additionally, to the extent appellants contend that the panel may have violated NAC 643.700 by awarding the students their requested hours and allowing them to transfer those hours to other barber schools, the regulation does not preclude the panel from reinstating earned hours nor does it require that a student be returned to the barber school in which they were enrolled—rather, they may be returned to their "course of study without prejudice." NAC 643.700(3).

[10]Appellants also argue that the Board's findings were unsupported by substantial evidence as a matter of law because, without an inspection of the premises, the panel only had the students' photographs and biased testimony to consider. However, as noted above, appellants have not established that they were entitled to an inspection, and this court will not reweigh witness credibility on appeal. *Law Offices of Barry Levinson*, 124 Nev. at 362, 184 P.3d at 384. Therefore, appellants have not established that any particular violation was unsupported by substantial evidence.

Appellants assert that the responsibility for establishing a barber school's teaching methodology has been "delegated" to the schools themselves, such that the matter is essentially unregulated, and, therefore, they could not have been disciplined in this case for enforcing policies governing the students' conduct. However, to support this proposition, appellants rely on NAC 643.680(2), which provides that "[b]efore any rules governing the conduct of students are adopted, the operator of the school shall submit them to the Board for approval."

As noted above, the panel in this case found by a preponderance of the evidence that Byron and Lewis had implemented and enforced several policies pertaining to student conduct without prior Board approval, including requiring students to "seek out patrons/members of the public and solicit barbering services" and "forfeiting earned student credit hours" for arbitrary and capricious reasons. Under NAC 643.680(2), these are "rules governing the conduct of students" that the panel found were adopted by appellants without "submit[ting] . . . to the Board for approval." *See Conduct*, *Black's Law Dictionary* (12th ed. 2024) (defining conduct as "[p]ersonal behavior, whether by action or inaction, verbal or nonverbal; the manner in which a person behaves; collectively, a person's deeds").

Appellants contend that NAC 643.680(2) only applies to a barber school's "initial plan" and that it does not require a barber school to update the Board on an ongoing basis when implementing *new* teaching methodologies. However, the plain language of NAC 643.680(2) provides that a barber school operator may violate this regulation by failing to seek out prior approval before implementing "any" new rule governing student conduct—thus, it is not limited to a school's "initial" teaching methodologies. To the extent appellants argue for the first time in their

reply brief that the word "conduct" in NAC 643.680 is ambiguous, we decline to consider this untimely argument. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised in an opening brief are deemed waived). Therefore, appellants are not entitled to relief on this basis.[11]

The imposition of fines, costs, and attorney fees was not arbitrary or capricious

Appellants argue that that the fines, costs, and attorney fees should all be reversed because "[s]imple fairness dictates that a warning and opportunity to cure an issue should be given to an individual prior to initiating formal discipline and then determining that they should receive a precedent setting punishment." Appellants also assert that the amount of attorney fees and costs awarded were unreasonable. The Board responds that it had authority to impose the amounts under NRS 643.185(2) (fines) and NRS 622.400(1)(a) (attorney fees and costs).

Here, appellants do not cite to legal authority establishing that they were entitled to a "warning and opportunity to cure" prior to the Board's initiation of disciplinary action. Further, we note that the panel

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[11]Appellants also contend that NAC 643.680(2) does not specify a penalty for failing to advise the Board of new teaching methodologies. However, the penalties for regulatory violations are addressed in NRS 643.185(1)-(2), which state that the Board may impose a fine of "not more than $1,000" if it finds a "[v]iolation by any person licensed pursuant to the provisions of this chapter of *any provision of* this chapter or *the regulations adopted by the Board*." (Emphases added).

Appellants further argue, without supporting legal authority, that it violates "fundamental fairness" and "due process" to require an instructor to notify the Board before implementing new teaching methodologies. Because appellants failed to cogently argue this claim, we decline to consider it. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

directed Byron to prepare a "plan of correction" to avoid being fined, and Byron declined to do so. Additionally, as the Board correctly stated, fines in an amount up to $1,000 per violation were permissible under NRS 643.185(2)(c), and appellants' fines did not exceed this amount. Accordingly, the panel's decision to impose fines here was not arbitrary and capricious and thus not an abuse of discretion.

In addition, NRS 622.400 authorizes the Board to recover attorney fees and costs. *See* NRS 622.400(1)-(2) (stating that a regulatory body may "recover from a person reasonable [attorney fees] and costs that are incurred by the regulatory body as part of its investigative, administrative and disciplinary proceedings against the person" upon submitting "an itemized statement of the fees and costs to the person"). After appellants were found in violation of NRS Chapter 643 and NAC Chapter 643, the Board submitted itemized expense reports and receipts to justify their requested fees and costs. Appellants only assert that these amounts are "mind-blowing," but do not offer any cogent argument as to why the fees and costs were unreasonable.[12] Thus, we decline to consider appellants' nonspecific challenge to the reasonableness of the imposed attorney fees and costs. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

Appellants also contend that the costs of transcripts were improperly assigned to them. Under NRS 233B.121(8), "[o]ral proceedings,

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[12]Appellants do not argue that the panel was required to consider the *Brunzell* factors before awarding attorney fees in an administrative proceeding, therefore any such argument is waived. *See Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349-50, 455 P.2d 31, 33 (1969) (setting forth the factors a *district court* must consider when determining the value of an attorney's services); *Powell*, 127 Nev. at 161 n.3, 252 P.3d at 672 n.3.

or any part thereof, must be transcribed on request of any party. The party making the request shall pay all the costs for the transcription." However, appellants did not identify the amount of any purportedly improper costs, nor did appellants show that the Board requested transcripts for which appellants were ordered to bear the cost. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n. 38. Thus, appellants have not demonstrated that the imposed fines, costs, and attorney fees were an abuse of discretion.[13]

The panel did not improperly adjudicate a civil dispute

Lastly, appellants argue that the panel adjudicated a civil dispute in excess of its authority by requiring appellants to release the students' hours from the schools and by awarding the students hours. Appellants contend that this deprived them of the compensation they claim to have been owed through the students' tuition payments.

Here, the panel expressly denied Byron's request to enforce the tuition contracts and indicated that such a dispute must be determined by a civil court. Additionally, nothing in the panel's orders or the district court's orders denying judicial review precludes appellants from bringing an appropriate civil suit to address their contractual claims.

Appellants rely on *Bivins Construction v. State Contractors' Board*, 107 Nev. 281, 809 P.2d 1268 (1991), in support of their argument that the panel improperly exceeded its scope and resolved a civil dispute. In *Bivins*, the Nevada Supreme Court stated that the administrative board's "suspension of appellant's contractor's license pending payment of

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[13]We note that the district court correctly acknowledged that the Board would not enforce the fines as to violations of NRS 643.185(1)(a) against both appellants and NRS 643.185(1)(c) against Lewis, and that appellants' respective fines should be reduced from the Board's orders accordingly.

[a claim] was tantamount to the award of contract damages in a contested case. The Board does not have the authority to impose damages upon parties subject to its licensing authority." *Id.* at 283-84, 809 P.2d at 1270.

However, *Bivins* is not analogous to the instant case. The panel did not suspend either of appellants' licenses, but instead corrected the students' previously earned hours that were improperly deducted and allowed those students to transfer to other barber schools, neither of which is tantamount to adjudicating a tuition contract. Thus, appellants' reliance on *Bivins* is unpersuasive, and we conclude that the panel did not improperly exceed its scope by adjudicating a civil claim.[14]

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

[14]Insofar as the parties have raised other arguments not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

cc: Hon. Gloria Sturman, District Judge
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