

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM L. O'BOYLE,  
Appellant,

vs.

NEVADA STATE BOARD OF  
NURSING; COOKIE BIBLE, RN;  
DEBRA SCOTT, RN; TAMARA  
BARENGO; MARY ANN LAMBERT,  
RN; ELENA LOPEZ-BOWLAN, RN;  
DOROTHY PERKINS, CNA; PATRICIA  
SHUNT, LPN; HELEN VOS, RN; KEITH  
MARCHER, ESQ.; GINA SESSIONS,  
ESQ.; RONALD RENNIE, RN; CINDY  
KIMBALL; BEVERLY FINLEY; LINDA  
ALURE, RN; CHRIS SANSON, RN;  
DEBBIE INSKIP, RN; DIANNE M.  
BRUMLEY; AND JANET MENGES,  
Respondents.

No. 39509

FILED

DEC 19 2002

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND  
REMANDING

This is a proper person appeal from an order dismissing appellant's petition for judicial review based on lack of jurisdiction. Having reviewed the record, we conclude that the district court lacked jurisdiction over the petition to the extent that it sought judicial review of respondents' denial of appellant's nursing license application, but had jurisdiction to the extent that the petition sought review of respondents' additional disciplinary actions.

William O'Boyle first applied for a Nevada nursing license in June 1998. After the Nevada State Board of Nursing denied the application, O'Boyle re-applied in September 1998. The Board postponed acting on the application so that O'Boyle could gather information about his answers to certain questions, but O'Boyle apparently did not supply any additional information and the application lapsed in September 1999.

In December 2000, O'Boyle again applied for a nursing license. On his application, he acknowledged a criminal history and previous disciplinary action in another state. The application was initially scheduled on the Board's January 18, 2001 meeting agenda, but was later removed from the agenda at O'Boyle's request. In October 2001, the Board notified O'Boyle that his application would be discussed, and possibly acted upon, at the Board's November 9, 2001 meeting. O'Boyle again requested a continuance and was advised that his request would be considered at the Board meeting. At the meeting, the Board denied the request for a continuance. O'Boyle was not present. The Board proceeded without O'Boyle and considered background information that O'Boyle has an extensive criminal history, a history of disciplinary actions against his nursing licenses in Arizona and Pennsylvania, and a pending disciplinary action in Delaware. The Board voted to deny O'Boyle's nursing license application under NRS 632.320.

On November 14, 2001, the Board's attorney notified O'Boyle of the Board's decision. On December 13, 2001, O'Boyle requested rehearing or reconsideration. On December 18, 2001, the Board denied O'Boyle's request on the basis that he had supplied no new or relevant information that would warrant rehearing or reconsideration. On January 7, 2002, the Board's attorney reiterated that the Board had denied O'Boyle's application and his request for reconsideration, and that its decision was final.

On January 22, 2002, O'Boyle filed a petition for judicial review under NRS 233B.130, which permits a party aggrieved by an administrative decision in a contested case to petition the district court for review. On February 6, 2002, the Board (and the individually-named Board members) moved to dismiss the petition for lack of jurisdiction. The

Board contended that judicial review was not available under NRS 233B.130 because this was not a contested case, which is defined by NRS 233B.032 as a “proceeding, including but not restricted to rate making and licensing, in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing, or in which an administrative penalty may be imposed.” Because the Board was not required to provide O’Boyle with a hearing on his nursing application before denying it, the Board argued that the licensing decision was not a contested case and the denial could not be reviewed under NRS 233B.130. The Board cited Private Investigator’s Licensing Board v. Atherley<sup>1</sup> as authority directly on point for its argument that the district court lacked jurisdiction to proceed. In that case, this court held that judicial review under NRS 233B.130 was not available to an unsuccessful applicant for a process server’s license because the regulatory statutes did not require notice and an opportunity for a hearing before the licensing board acts on the application, and thus the board’s denial was not the result of a contested case.<sup>2</sup>

O’Boyle opposed the motion to dismiss, but the district court agreed that it lacked jurisdiction, granted the motion and dismissed the petition. O’Boyle timely appealed.

We agree that the district court lacked jurisdiction over the judicial review petition to the extent that it sought review of the Board’s license application denial. NRS 233B.130 limits judicial review to decisions in contested cases, and the nursing license denial does not fit

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<sup>1</sup>98 Nev. 514, 654 P.2d 1019 (1982).

<sup>2</sup>Id. at 515, 654 P.2d at 1019-20.

within NRS 233B.032's definition of a contested case.<sup>3</sup> NRS chapter 632, which governs the licensure of nurses in Nevada, does not require notice and an opportunity for hearing before the Board may act on a license application, and does not provide for any appeal if an application is denied. Although NAC 632.188 provides for an appeal to the Board if a board staff member denies a license application, in this case the entire Board voted to deny O'Boyle's application.

And even if we were to view O'Boyle's judicial review petition as a writ petition, as the court did in Atherley, it would fail on its merits with respect to the license application denial. O'Boyle does not challenge the factual basis for the denial, and NRS 632.320 permits the Board to deny a license application (or to revoke or suspend an issued license or certificate, or to take other disciplinary action against a licensee or holder of a certificate) upon determining that the applicant "(2) Is guilty of a felony or any offense: (a) Involving moral turpitude; or (b) Related to the qualifications, functions or duties of a licensee or holder of a certificate, in which case the record of conviction is conclusive evidence thereof," or "(12) Has been disciplined in another state in connection with a license to practice nursing . . . or has committed an act in another state which would constitute a violation of this chapter." Nothing in the record suggests that the Board's decision was arbitrary or capricious in this case. Unfortunately, the Board did not simply deny O'Boyle's application for a nursing license.

It appears that the Board also treated the application as a disciplinary matter, and although there is no statutory requirement for notice and hearing before the Board may deny a license application, the

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<sup>3</sup>Id.

statutory scheme does require notice and an opportunity for hearing before the Board may discipline a licensed nurse.<sup>4</sup> In a January 2, 2001 letter to O'Boyle regarding his application, the Board advised him that he would "need to formally waive [his] right to timely legal notice" for the Board to consider his application at its meeting later that month, but that he could also request a continuance if he preferred. The Board then noted that O'Boyle's application included a "yes" answer indicating a violation of NRS 632.320, which is grounds for license denial or other disciplinary action, and warned that O'Boyle could be subject to disciplinary action should the Board grant his license application. The Board advised O'Boyle "you are specifically informed that you have the right to appear either personally or through counsel of your choice. You have the right to respond and to present relevant evidence and argument on all issues involved." Finally, the Board advised O'Boyle that if it denied his application, "the disciplinary action will become part of your permanent record, be published with the list of disciplinary actions the Board has taken and reported to the National Council of State Boards of Nursing's Databank, Nursys, and/or the Healthcare Integrity and Protection Data Bank and may be used in any subsequent hearings by the Board."

In the November 14, 2001 letter advising O'Boyle that the Board had denied his application, the Senior Deputy Attorney General representing the Board reiterated and confirmed the Board's disciplinary warning almost verbatim. The letter states: "This disciplinary action will become part of your permanent record, be published with the list of disciplinary actions the Board has taken and reported to the National Council of State Boards of Nursing disciplinary data bank, Nursys and/or

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<sup>4</sup>NRS 632.350 and 632.355.


the Healthcare Integrity and Protection Data Bank and may be used in any subsequent hearings by the Board.”

Although we question whether NRS chapter 632 authorizes the Board to discipline a nursing license applicant whose application it has denied, disciplinary action requires notice and an opportunity for hearing, and a disciplinary proceeding qualifies as a contested case subject to judicial review under NRS 233B.130. O’Boyle’s district court petition and responses to the motion to dismiss raise this issue, albeit somewhat inartfully, and the district court had jurisdiction to consider the judicial review petition to the extent that it challenges the Board’s disciplinary action beyond denying O’Boyle’s nursing license application.

Accordingly, we affirm the district court’s order with respect to judicial review of the license application denial, but reverse the order with respect to judicial review of the Board’s disciplinary action and remand for further proceedings on the disciplinary action issue only.

It is so ORDERED.

  
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Shearing J.

  
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Leavitt J.

  
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Becker J.

cc: Hon. Sally L. Loehrer, District Judge  
William L. O’Boyle  
Attorney General/Carson City  
Clark County Clerk