

IN THE COURT OF APPEALS OF IOWA

No. 3-432 / 12-0293
Filed July 24, 2013

ADEL S. AL-JURF, M.D.,
Petitioner-Appellant,

vs.

IOWA BOARD OF MEDICINE,
Respondent-Appellee.

Appeal from the Iowa District Court for Johnson County, Paul D. Miller,
Judge.

Dr. Al-Jurf appeals from the order denying his petition for judicial review.

AFFIRMED.

Adel Al-Jurf M.D., Iowa City, appellant pro se.

Thomas J. Miller, Attorney General, and Theresa O'Connell Weeg,
Assistant Attorney General, for appellee.

Considered by Eisenhauer, C.J., and Potterfield and Tabor, JJ.

TABOR, J.

The Iowa Board of Medicine decided Adel S. Al-Jurf, M.D., engaged in unethical conduct in the practice of medicine while employed as a surgeon by the University of Iowa Hospitals and Clinics. The board issued a public reprimand and placed him on probation for three years. On judicial review, the district court affirmed the board's decision and found no abuse of discretion in the board's release of a media statement concerning the disciplinary proceedings.

On appeal, Dr. Al-Jurf challenges the board's authority to prosecute him for unethical conduct and its interpretation of Iowa Code sections 147.55(3) and 272C.10(3) (2003). He also alleges the statutes are unconstitutionally vague. Finally, Dr. Al-Jurf renews his objection to the news release.

Because the board was entitled to amend its charges to conform to the law in effect at the time of the doctor's conduct, dismissal was not warranted. We also determine the board's interpretation of "unethical conduct" was not irrational, illogical, or wholly unjustified; Dr. Al-Jurf did not preserve his constitutional claim; and the board did not abuse its discretion in issuing the press release. Accordingly, we affirm the district court's order denying Dr. Al-Jurf's petition for judicial review.

I. Background Facts and Proceedings.

Dr. Al-Jurf was licensed to practice medicine in Iowa in 1977.¹ The same year, the University of Iowa Hospitals and Clinics (University Hospitals) hired him as a general surgeon and faculty member. He received tenure in 1981 and

¹ Dr. Al-Jurf has not practiced medicine since 2004. His medical license expired when he failed to renew it in April 2007.

became a full professor in 1986. By 2002, Dr. Al-Jurf was one of the top earners in the surgical oncology department.

On June 13, 2003, the university provost filed an ethical complaint against Dr. Al-Jurf, alleging that on several occasions in 2002 and 2003 he “subjected colleagues to personal vilification and verbal abuse in a manner that creates an unacceptable work environment for them.” A three-person faculty judicial panel convened in April 2004 to hear sworn testimony from thirteen witnesses on the matter. On July 14, 2004, the panel found that while Dr. Al-Jurf did not commit sexual harassment, violence, or retaliation, on several occasions he violated provisions of the University of Iowa operations manual regarding professional ethics and academic responsibility. The panel recommended he “not be allowed to return to operating at [University Hospitals] or to maintain his position in the Department of Surgery.”

The university president reviewed the panel’s decision, accepted its findings, and in a letter dated January 20, 2005, terminated Dr. Al-Jurf’s employment with University Hospitals. Dr. Al-Jurf appealed the decision to the Iowa Board of Regents, which affirmed the president. The district court affirmed the regents’ decision on judicial review. Our court affirmed the judicial review ruling in an unpublished decision. See *Al-Jurf v. Board of Regents*, No. 06-1621, 2007 WL 2004461, *3 (Iowa Ct. App. July 12, 2007).

Prompted by Dr. Al-Jurf’s interest in reinstating his medical license, the Iowa Board of Medicine filed a statement of charges against him on May 21, 2009. The charges addressed the same conduct for which Dr. Al-Jurf was fired.

The charges set forth in Count I alleged Dr. Al-Jurf had engaged “in unprofessional conduct in the practice of medicine,” in violation of Iowa Code sections 147.55(3) and 272C.10(3) (2009), as well as Iowa Administrative Code rule 653–23.1(4) (2009). Count II alleged Dr. Al-Jurf had engaged in disruptive behavior—defined as a pattern of contentious, threatening, or intractable behavior that interfered with, or had the potential to interfere with, patient care or the effective functioning of health care staff—in violation of Iowa Code section 148.6(2) and Iowa Administrative Code rule 653–13.7(5).

The charges referenced Dr. Al-Jurf’s conduct on or before April 23, 2003, but listed the statutes and rules in effect for 2009. Dr. Al-Jurf moved to dismiss the charges because of the discrepancy. Counsel for the board conceded Count II should be dismissed because the statute and administrative rule set forth in that count were not in effect when the conduct occurred. But because the code sections cited in Count I—relating to “unethical conduct” rather than “unprofessional conduct”—covered behavior substantially similar to the conduct for which Dr. Al-Jurf was charged, the board’s attorney argued the board should be allowed to pursue charges under those sections. The board delegated the ruling to an administrative law judge (ALJ), who dismissed Count II in its entirety, but only partially dismissed Count I. The ALJ determined the board could decide whether Dr. Al-Jurf’s conduct constituted “unethical conduct” as prohibited by sections 147.55(3) and 272C.10(3) (2003).²

² At all relevant times, both sections provided that a medical license may be revoked or suspended for “[k]nowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of a profession or engaging in unethical conduct or

Counsel for the board requested the doctrine of res judicata be applied to give preclusive effect to the facts found by the University Hospitals faculty judicial panel during the investigation of the ethical complaint against the doctor. The board again delegated the matter to an ALJ, who granted the request. The ALJ determined the board should focus on whether the facts established in the University Hospitals proceedings constituted a violation of the code sections cited in Count I, and if so, what sanction was appropriate.

The board held a hearing on October 28, 2010, to determine whether Dr. Al-Jurf violated sections 147.55(3) and 272C.10(3). On January 13, 2011, the board entered its order, finding Dr. Al-Jurf's "unprofessional, hostile, and intimidating interactions with his [University Hospitals] colleagues constituted unethical conduct in violation of sections 147.55(3) and 272C.10(3)." The board reprimanded Dr. Al-Jurf for his unethical conduct and warned him that similar behavior in the future could result in disciplinary action. The board required Dr. Al-Jurf to successfully complete a clinical practice re-entry program before reinstating his license. The board further ordered Dr. Al-Jurf to complete a three-year probation period once he reinstated his medical license.

The board elected not to sanction Dr. Al-Jurf, noting none of his "inappropriate behavior" was directed toward patients, as well as his "sincere" belief that he was acting in his patients' best interests, and the apparent lack of malicious intent toward his colleagues. The board stated Dr. Al-Jurf "clearly

practice harmful or detrimental to the public." Iowa Code §§ 147.55(3), 272C.10(3). Section 147.55(3) also allows the board to "otherwise discipline[]" a licensee who engages in such behavior. All future references to sections 147.55 and 272C.10 refer to the 2003 edition of the code.

lacks insight and understanding of how his behavior appears to others, how his behavior negatively affected his colleagues, and how his behavior could have adversely affected patient care.”

On January 26, 2011, the board issued a press release detailing the factual basis for the original charges brought against Dr. Al-Jurf. The release did not set forth any of the mitigating facts in the board’s ruling. It also stated Dr. Al-Jurf engaged in “a pattern of unprofessional, hostile, and intimidating behavior in the practice of medicine.”

Dr. Al-Jurf filed a petition for judicial review on February 8, 2011. He appealed from: (1) the order applying the doctrine of issue preclusion to the facts decided in the proceedings that led to his termination; (2) the order denying his motion to dismiss Count I in its entirety; (3) the board’s finding he violated Iowa Code sections 147.55(3) and 272C.10(3); and (4) the board’s issuance of the “misleading” press release.

On January 13, 2012, the district court entered its order denying Dr. Al-Jurf’s petition for judicial review. The court found Dr. Al-Jurf failed to exhaust all of his administrative remedies by not appealing the ALJ ruling on his motion to dismiss; therefore, the court found the question of whether Dr. Al-Jurf was properly disciplined was not preserved for review. The court went on to find that even if the issue was preserved, the record established Dr. Al-Jurf violated the ethical standards for physicians. It also rejected Dr. Al-Jurf’s claim that sections 147.55(3) and 272C.10(3) are unconstitutional as applied to him. The court further found the board properly gave preclusive effect to the fact findings by the

faculty panel. Finally, it found the board did not abuse its discretion in issuing the press release, which was not inaccurate or misleading.

Dr. Al-Jurf appealed the district court's ruling on February 12, 2012.

II. Scope and Standards of Review.

We review judicial review orders for legal error. *Strickland v. Iowa Bd. of Medicine*, 764 N.W.2d 559, 561 (Iowa Ct. App. 2009). We also must determine the proper standard of review of the board's action under Iowa Code section 17A.19(10) (2011).³ See *id.* The court may grant relief if (1) the agency action prejudiced the substantial rights of the petitioner and (2) the agency action meets any of the criteria contained in section 17A.19(10)(a) through (n). *Burton v. Hilltop Care Ctr.*, 813 N.W.2d 250, 256 (Iowa 2012). We apply the standards set forth in chapter 17A to determine whether our conclusions are the same as those of district court. *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 464 (Iowa 2004). If they are, we affirm; otherwise, we reverse. *Id.*

Our precise review depends on which aspect of the agency's decision is being challenged. See *Burton*, 813 N.W.2d at 256. When asked to review an agency's legal interpretation, the level of deference we afford the agency depends on whether the legislature clearly vested the agency with the authority to interpret the governing law. *Id.* If the agency has not been clearly vested with authority to interpret the provision, we reverse if the agency's interpretation is erroneous. Iowa Code § 17A.19(10)(c). If the agency has been clearly vested with the authority to interpret the provision, we may only disturb that

³ Hereinafter, all references to chapter 17A refer to the 2011 edition of the code, which was in force at the time of the board's final action.

interpretation if it is “irrational, illogical, or wholly unjustifiable.” *Id.* § 17A.19(10)(f). In this case, our level of review depends on whether the legislature vested the board with authority to interpret the term “unethical conduct” as set forth in sections 147.55(3) and 272C.10(3).

In determining whether the legislature has vested an agency with interpretative discretion, we first look to the agency’s enabling statute to see if it explicitly addresses the issue. See *Renda v. Iowa Civil Rights Comm’n*, 784 N.W.2d 8, 11 (Iowa 2010) (noting the question of interpretative discretion is “easily resolved” where the enabling statute explicitly addresses the issue). Although the legislature often does not explicitly address the extent to which an agency is authorized to interpret a statute, *id.*, it has done so here.

Iowa Code section 147.76 directs professional boards to “adopt all necessary and proper rules to implement and interpret this chapter and chapters 147A through 158, except chapter 148D.”⁴ This section clearly vests professional boards with authority to interpret the chapters at issue. See *Iowa Medical Soc. v. Iowa Bd. of Nursing*, 831 N.W.2d 826, 838 (Iowa 2013) (“The legislature has clearly vested the nursing board with rulemaking and interpretive authority for Iowa Code chapter 152 governing the practice of nursing.”); *Houck v. Iowa Bd. of Pharmacy Exam’rs*, 752 N.W.2d 14, 17 (Iowa 2008) (“The legislature has delegated broad authority to the Board of Pharmacy Examiners for the regulation of the practice of pharmacy in Iowa.”). Because section 147.76 clearly vests the board with the power to interpret section 147.55(3), we will only

⁴ This language was enacted in 1992 and was in effect through June 30, 2007. See 1992 Iowa Legis. Serv. 1097 (West).

disturb its reading of the term “unethical conduct” if it is “irrational, illogical, or wholly unjustifiable.” *Id.* § 17A.19(10)(I).

The legislature also delegated interpretive authority through section 272C.10(3), stating the board “shall by rule include provisions for the revocation or suspension of a license” and listing “unethical conduct” as one basis for those consequences. *Id.* § 272C.10(3). Accordingly, we apply the same “irrational, illogical, or wholly unjustifiable” standard for that statute. *Id.* § 17A.19(10)(I).

III. Analysis.

Dr. Al-Jurf first argues the board lacked authority to prosecute him under its original charge of “unprofessional conduct” based on his performance before 2006. He next contends that if the board properly amended the charge, it misinterpreted the new allegation of “unethical conduct” and the term was unconstitutionally vague as applied to him. Finally, Dr. Al-Jurf asserts the board abused its authority by issuing an inaccurate press release.

A. Was Dr. Al-Jurf entitled to dismissal of all charges?

In the original statement of charges, the board accused Dr. Al-Jurf of engaging in “unprofessional conduct” in the practice of medicine. In addition to citing sections 147.55(3) and 272C.10(3), Count I alleged Dr. Al-Jurf violated Iowa Administrative Code rule 653–23.1(4) (2009), which gave the board authority to discipline a physician for being unprofessional. That conduct is defined as follows:

Engaging in unethical or unprofessional conduct includes, but is not limited to, the committing by a licensee of an act contrary to honesty, justice or good morals, whether the same is committed in the course of the licensee’s practice or otherwise, and whether

committed within this state or elsewhere; or a violation of the standards and principles of medical ethics or 653–13.7(147,148,272C) or 653–13.20(147,148) as interpreted by the board.

Iowa Admin. Code r. 653–23.1(4).

Rule 653–23.1(4) was not in effect at the time of the conduct that led to the charges against Dr. Al-Jurf. Dr. Al-Jurf moved to dismiss based on this inconsistency, and the board delegated the matter to an ALJ as allowed by rule 653–25.6. That rule states in pertinent part: “The board may request that an administrative law judge assist the board with initial rulings on prehearing matters. Decisions of the administrative law judge serving in this capacity are subject to the interlocutory appeal provisions of rule 653–25.23(17A).^[5]” Iowa Admin. Code r. 653–25.6. The ALJ partially denied Dr. Al-Jurf’s motion to dismiss and allowed the board to determine whether the doctor’s actions constituted unethical conduct as prohibited by the code sections.

Counsel for the board now argues because Dr. Al-Jurf did not appeal the interlocutory order, he did not exhaust his administrative remedies and has therefore failed to preserve error. We disagree.

⁵ Rule 653-25.23 states:

Upon written request of a party or on its own motion, the board may review an interlocutory order of the executive director, administrative law judge, or hearing panel. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first. In determining whether to do so, the board shall consider:

1. The extent to which its granting the interlocutory appeal would expedite final resolution of the case; and
2. The extent to which review of that interlocutory order by the board at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy.

“A person or party who has exhausted all adequate administrative remedies and who is aggrieved or adversely affected by any final agency action is entitled to judicial review thereof.” Iowa Code § 17A.19(1). This provision prevents courts from interfering with the administrative process until it has been completed. *City of Des Moines v. City Dev. Bd. of State*, 633 N.W.2d 305, 309 (Iowa 2001). The administrative-exhaustion requirement does not apply unless two conditions are satisfied: “(1) ‘an administrative remedy must exist for the claimed wrong’, and (2) ‘the statutes must expressly or impliedly require that remedy to be exhausted before resort to the courts.’” *Travelers Indem. Co. v. D.J. Frazen, Inc.*, 792 N.W.2d 242, 247 (Iowa 2010) (citation omitted).

In this case, an administrative remedy existed for the claimed wrong; rule 653–25.23 allowed Dr. Al-Jurf to ask for review of the ALJ’s interlocutory order. And it is true that Dr. Al-Jurf never sought an interlocutory appeal to the board. But we are not convinced he was required to exhaust that remedy before resorting to the court.

Our supreme court answered a similar question in *Leaseamerica Corp. v. Iowa Department of Revenue*, 333 N.W.2d 847 (Iowa 1983). In that case, Leaseamerica protested a tax penalty assessed by the Iowa Department of Revenue. *Leaseamerica*, 333 N.W.2d at 848. The parties appeared before a department hearing officer, who then issued a proposed decision upholding the tax assessment. *Id.* Leaseamerica did not appeal the decision to the revenue director. *Id.* In dismissing Leaseamerica’s petition for judicial review, the district

court found it did not have subject matter jurisdiction because Leasamerica failed to exhaust administrative remedies. *Id.*

In reversing the district court, our supreme court held nothing in chapter 17A “expressly” required an intra-agency appeal. *Id.* at 848-49 (citing Iowa Code § 17A.15(3)) (“When the presiding officer makes a proposed decision, that decision then becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within the time provided by rule.”) and *Ellis v. Iowa Dep’t of Job Serv.*, 285 N.W.2d 153, 155 (Iowa 1979) (holding section 17A.19(1) did not “expressly” state a petition for rehearing is required to exhaust administrative remedies). The court further found no requirement could be implied by statute, noting the statutory language “implies that opportunities for such procedures are provided *if and when* an appeal is taken to or conducted by the director.” *Leaseamerica*, 333 N.W.2d at 849. The court then held “the legislature provided for permissive, not mandatory, intra-agency appeals,” noting that requiring every hearing officer’s decision in a consumer use tax dispute to be appealed to the director would impede the “ease and availability” of judicial review, in contravention of the purpose of the Iowa Administrative Code. *Id.*; *see also* Iowa Code § 17A.19(3) (listing one of the purposes of the Iowa Administrative Procedure Act as “to simplify the process of judicial review of agency action as well as increase its ease and availability”).

Applying the *Leaseamerica* holding to the present dispute, we conclude Dr. Al-Jurf was not required to request an interlocutory review of the ALJ’s ruling

on his motion to dismiss to exhaust his administrative remedies. While Iowa Administrative Code rule 653–25.23 allows either a party or the board to initiate interlocutory appeal of an intra-agency order, nothing in the rule either expressly or impliedly mandates such a challenge. Because interlocutory appeal was permissive and not mandatory, the doctrine of administrative exhaustion cannot be applied to bar Dr. Al-Jurf’s claim.

We now turn to the question whether the ALJ should have dismissed Count I in its entirety. Counsel for the board conceded rule 653–23.1(4) was not in effect during the period for which Dr. Al-Jurf was charged, but argued the board should be allowed to prosecute him under Iowa Code sections 147.55(3) and 272C.10(3). Both sections provide that a medical license may be revoked or suspended (or, under section 147.55, the licensee may be “otherwise disciplined”) for “[k]nowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public.” Iowa Code §§ 147.55(3), 272C.10(3).

Count I alleged Dr. Al-Jurf “engag[ed] in unprofessional conduct in the practice of medicine.” The board’s attorney argued, and the ALJ agreed, the term “unethical conduct” found in the statutes was synonymous with the term “unprofessional conduct.” The ALJ allowed the board to amend the statement of charges to allege Dr. Al-Jurf engaged in unethical conduct in the practice of medicine pursuant to Iowa Code sections 147.55(3) and 272C.10(3). The

question of whether the motion to dismiss was properly denied turns on whether the board should have been allowed to amend its statement of charges.

An agency's power to decide claims normally includes authority to cure any deficiencies in the pleadings. See *MC Holdings, L.L.C. v. Davis Cnty. Bd. of Review*, 830 N.W.2d 325, 330 (Iowa 2013). The key to pleading in an administrative process is the opportunity for the responding party to prepare and defend. *IBP, Inc. v. Burress*, 779 N.W.2d 210, 221 (Iowa 2010). The test is fundamental fairness. *Id.* While Dr. Al-Jurf was entitled to know the basis of the board's complaint, he was not entitled to complete dismissal if the record shows he understood the amended allegation and was afforded a fair chance to meet the charges. See generally *Citizens State Bank of Marshfield, Mo. v. FDIC*, 751 F.2d 209, 213 (8th Cir. 1984) (holding "respondent to an agency action is entitled to know the basis of the complaint against it but has been accorded due process if the record shows that it understood the issues and was afforded a full opportunity to meet the charges" (citing *NLRB v. Mackay Radio & Telegraph Co.*, 304 U.S. 333, 350 (1938))).

The amendment here—substituting the word "unethical" for "unprofessional"—did not substantially change the allegations leveled against Dr. Al-Jurf, who was well aware of the inappropriate interactions alleged to endanger his medical license. Whether his conduct could be considered unethical was a question for the board. Because the amendment did not unfairly prejudice Dr. Al-Jurf's rights, we affirm the order partially denying his motion to dismiss.

B. Did substantial evidence support the board's determination that Dr. Al-Jurf's conduct violated Iowa Code sections 147.55 and 272C.10(3)?

Dr. Al-Jurf next challenges the board's finding that his conduct violated sections 147.55 and 272C.10(3).

In its fact findings, the board outlined the conduct that led to Dr. Al-Jurf's discipline. Dr. Al-Jurf engaged in "a pattern of repeated behavior" in which he raised his voice and refused to listen to colleagues; acted in an overbearing way toward co-workers who were subordinate to him; "bullied" and, at times, demeaned them; and on a few occasions, touched or encroached upon their personal space in a way that made them feel physically threatened. In May and June of 2002, his behavior interfered with the work of a nurse and created a hostile environment for her. On one occasion, Dr. Al-Jurf subjected a junior faculty member to "vilification" by engaging in "sarcastic and abusive criticism" and refusing to listen to her. He also caused distress to a colleague, failing to "give due respect to the rights of others to perform their work."

The board also found Dr. Al-Jurf repeatedly created a hostile environment for the residents training under him, "provid[ing] students a poor example of how colleagues and support staff are willing to be treated," which made the students "unwilling to question or probe for alternatives, reasons, rationale, and so on," and negatively impacted the ability to provide optimal patient care. The board also noted the faculty panel found Dr. Al-Jurf instilled a hostile educational

environment and violated the University Hospitals rule “regarding conduct which has an unreasonable effect on interfering with an individual’s academic efforts.”

Based on the foregoing incidents, the board concluded a “preponderance of the evidence established that [Dr. Al-Jurf]’s unprofessional, hostile, and intimidating interactions with his colleagues at [University Hospitals]” violated the “well established standards of ethical conduct” for physicians during the relevant time period. On this basis, the board concluded Dr. Al-Jurf’s actions “constituted unethical conduct, in violation of Iowa Code sections 147.55(3) and 272C.10(3).”

We find substantial evidence supports the board’s findings. Section 272C.10(3) requires the board to include provisions for the revocation or suspension of a license for “engaging in unethical conduct.” During the time period for which Dr. Al-Jurf was charged with violating sections 147.55(3) and 272C.10(3), the board’s rules embraced principles of medical ethics as set forth by the American Medical Association (AMA).⁶ See Iowa Admin. Code rs. 653–13.10 (2002), 653–18.1 (2003).⁷ These rules state doctors “should make available to their . . . colleagues the benefits of their professional attainments.” Iowa Admin. Code rs. 653–13.10(13), 653–18.2(1). They also emphasize the “principal objective” of “render[ing] service to humanity with full respect for

⁶ The 160-year-old American Medical Association Code of Medical Ethics “is widely recognized as the most comprehensive ethics guide for physicians.” Nathan A. Bostick et al, *Report of The Council on Ethical and Judicial Affairs: Physician Pay-For-Performance Programs*, 3 Ind. Health L. Rev. 429 (2006). While not every physician is a member of the AMA, every physician is subject to its code of ethics. June M. McKoy et al, *Is Ethics For Sale? . . . Juggling Law and Ethics in Managed Care*, 8 DePaul J. Health Care L. 559, 582 (Spring 2005).

⁷ Any further mention of rule 653—13.10 refers to the rule in effect in 2002 and any mention of rules 653—18.1 or 18.2 refers to the rules in effect in 2003.

dignity,” Iowa Admin. Code rs. 653–13.10(1), 653–18.1, the need to “uphold the dignity and honor of the profession,” Iowa Admin. Code rs. 653–13.10(5), 653–18.2(3), and the extension of these responsibilities “not only to the individual, but also to society.” Iowa Admin. Code rs. 653–13.10(11), 653–18.2(9).

Applying these rules to Dr. Al-Jurf’s conduct, we find sufficient evidence supports the board’s finding that Dr. Al-Jurf’s interactions with his colleagues at University Hospitals constituted unethical conduct. Dr. Al-Jurf created a hostile educational environment, failing to make the benefits of his knowledge and attainments available to the residents under his training. His actions in threatening, demeaning, bullying, and interfering with the abilities of others to do their work failed to uphold dignity and honor in the medical profession. Because it was not irrational, illogical, or wholly unjustifiable for the board to find Dr. Al-Jurf violated sections 147.55(3) and 272C.10(3), we affirm.

C. Are sections 147.55(3) and 272C.10(3) unconstitutionally vague as applied to Dr. Al-Jurf?

Dr. Al-Jurf next alleges sections 147.55(3) and 272C.10(3) are void for vagueness because they do not define “unethical conduct.” Dr. Al-Jurf does not state how he preserved error on this claim or point to where in the record the issue was raised and decided as required by Iowa Rule of Appellate Procedure 6.903(2)(g)(1). If a party’s brief fails to comply with the rules of appellate procedure, we are not bound to consider that party’s position. *In re Estate of DeTar*, 572 N.W.2d 178, 181 (Iowa Ct. App. 1997). This is true even when a non-lawyer is handling his own appeal. *Id.* at 180.

We are unable to tell from Dr. Al-Jurf's brief whether he raised a constitutional claim in the prior proceedings. Accordingly, we decline to address his vagueness issue.

D. Did the board abuse its power in issuing the press release?

Finally, Dr. Al-Jurf contends the board overstepped its authority in issuing the January 26, 2011 press release regarding the disciplinary proceedings.⁸ Dr. Al-Jurf argues the board abused its discretion by reciting the original charges, failing to highlight mitigating facts, and stating he engaged in "a pattern of unprofessional, hostile, and intimidating behavior in the practice of medicine."

If the board's act of issuing the press release was "unreasonable, arbitrary, capricious, or an abuse of discretion," Dr. Al-Jurf is entitled to relief. Iowa Code § 17A.19(10)(n). An agency abuses its discretion when it exercises such discretion "on grounds clearly untenable or to an extent clearly unreasonable." *Marovec v. PMX Indus.*, 693 N.W.2d 779, 782 (Iowa 2005). An abuse of discretion also means the decision "lacked rationality and was made clearly against reason and evidence." *Id.*

We agree with the district court that Dr. Al-Jurf failed to meet his high burden of showing the board abused its discretion in issuing the press release. While the release could have done a more thorough job of reflecting the final outcome of the board's deliberations, nothing in the notice was inaccurate. The

⁸ The board's final written decision and fact-findings are public record. Iowa Code § 272C.6(4)(a). The board's rules require its final decisions be reported to "the appropriate organizations," which include the "National Practitioner Data Bank, the Federation of State Medical Boards and all media and other organizations that have filed a request for public information." Iowa Admin. Code r. 653—25.32.

release stated that on May 21, 2009, the board charged Dr. Al-Jurf with engaging in “a pattern of unprofessional conduct.” While the board later amended the charge to “unethical conduct,” the board ultimately characterized his behavior as “unprofessional, hostile, and intimidating.” The board’s action in releasing the media notice in its present form was not “clearly against reason and evidence.”

Because we find no merit in Dr. Al-Jurf’s claims on appeal, we affirm the district court’s denial of relief.

AFFIRMED.