

**IN THE COURT OF APPEALS OF IOWA**

No. 6-1015 / 05-2095  
Filed May 9, 2007

**EDUARDO REVEIZ, M.D.,**  
Plaintiff-Appellant/Cross-Appellee,

**vs.**

**IOWA BOARD OF MEDICAL EXAMINERS,**  
Defendant-Appellee/Cross-Appellant,

**IOWA FREEDOM OF INFORMATION COUNCIL,**  
Intervenor-Appellee/Cross-Appellant.

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Appeal from the Iowa District Court for Polk County, Michael D. Huppert,  
Judge.

Plaintiff appeals, and the defendant and intervenor cross-appeal, the  
district court's ruling on the confidentiality of the statement of charges against  
plaintiff. **AFFIRMED IN PART AND REVERSED IN PART.**

Michael M. Sellers of Sellers Law Office, West Des Moines, for appellant.

Thomas J. Miller, Attorney General, and Theresa O'Connell Weeg and  
Heather L. Adams, Assistant Attorneys General, for appellee Board.

Michael A. Giudicessi and C. Jennifer Peterson of Faegre & Benson,  
L.L.P., Des Moines, for appellee Council.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

**MILLER, J.**

**I. Background Facts & Proceedings**

On July 28, 2005, the Iowa Board of Medical Examiners filed notice of hearing and a statement of charges against Dr. Eduardo Reveiz. The statement of charges outlined the charges of professional incompetency against Dr. Reveiz. The statement then included Dr. Reveiz's past history of disciplinary charges by the Board. As revised, paragraph ten of the statement of charges provided:

Respondent has demonstrated a pattern of engaging in professional incompetency and practice harmful or detrimental to the public in his care and treatment to several patients, including but not limited to the following:

- a. Respondent inappropriately failed in two cases to timely diagnose and treat appendicitis; and
- b. Respondent inappropriately failed in one case to timely diagnose and treat testicular torsion.

Dr. Reveiz filed an application for a temporary and permanent restraining order, claiming the notice of hearing and statement of charges should be considered confidential under Iowa Code section 272C.6(4) (2005). The Board resisted the application for a restraining order. The Iowa Freedom of Information Council intervened, and resisted the application for a restraining order. The parties agreed the request for a restraining order should actually be considered a request for a stay of agency action under section 17A.19(5)(c).<sup>1</sup>

After a hearing, the district court determined information gathered by the Board during its investigation of Dr. Reveiz should be considered confidential

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<sup>1</sup> Section 17A.19(5)(c) permits an application for stay to be filed in the district court if the agency has refused to grant an application for stay, or "application to the agency for a stay or other temporary remedies is an inadequate remedy . . . ." The Board conceded that it would have refused an application for stay if an application had been made to the Board.

under section 272C.6(4). The court found patient-specific information garnered through investigation was confidential and should not be disseminated to the public.<sup>2</sup> The court concluded the balance of the charges, the notice of hearing, and the proposed press release were not confidential. The court also found Dr. Reveiz failed to show he would suffer irreparable injury if the non-confidential information were disseminated. The court thus granted in part and denied in part the request for a stay.

The Board filed a motion pursuant to Iowa Rule of Civil Procedure 1.904(2), and the motion was joined by the Council. The court reviewed the charges against Dr. Reveiz, and determined paragraph ten of the statement of charges referred to information gathered during the investigative process, and should be considered confidential under section 272C.6(4).<sup>3</sup> The court otherwise affirmed its earlier ruling.

Dr. Reveiz appealed the district court's decision. The Board and the intervenor Council cross-appealed.

## **II. Standard of Review**

Our review in this case is governed by the Iowa Administrative Procedure Act. Iowa Code § 17A.19(10); *Iowa Ag Constr. Co., Inc. v. Iowa State Bd. of Tax*

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<sup>2</sup> At the time of the hearing, the district court did not have available to it the statement of charges made against Dr. Reveiz. The Board submitted as an example the statement of charges against another doctor. The statement of charges in the example, however, was much more patient-specific and detailed than the statement of charges in the present case.

<sup>3</sup> In considering the post-trial motion, the district court had before it the revised statement of charges made against Dr. Reveiz. We have set forth paragraph ten of the revised statement of charges above. The original statement of charges referred to a peer review committee report. Prior to the post-trial motion, the Board revised the statement of charges to eliminate this reference.

*Review*, 723 N.W.2d 167, 172 (Iowa 2006). The parties dispute the Board's interpretation of a statute. The interpretation of a statute is always a matter of law for the court to decide. *Insituform Technologies, Inc. v. Employment Appeal Bd.*, 728 N.W.2d 781, 800 (Iowa 2007).

Whether we give deference to an agency's interpretation of a statute depends upon whether a provision of law has clearly vested interpretation of the statute in the discretion of the agency. See Iowa Code § 17A.19(10)(c), (l); *Thoms v. Iowa Public Employees' Retirement Sys.*, 715 N.W.2d 7, 10-11 (Iowa 2006). Section 272C.3(1)(a) provides a licensing board has the power to "[a]dminister and enforce the laws and administrative rules provided for in this chapter and any other statute to which the licensing board is subject." The Board also has the power to "establish by rule licensee disciplinary procedures." Iowa Code § 272C.5(1). We conclude interpretation of the statute has clearly been vested by a provision of the law in the discretion of the Board. See *Thoms*, 715 N.W.2d at 11 (noting that where agency had ability to administer statute, and adopt rules necessary to do so, agency was clearly vested with discretion to interpret statute). Therefore, we review to determine whether the agency's interpretation was irrational, illogical, or wholly unjustifiable. Iowa Code § 17A.19(10)(l); *City of Des Moines v. Employment Appeal Bd.*, 722 N.W.2d 183, 193-94 (Iowa 2006).

Section 17A.19(5)(c) provides a district court may grant a stay of agency action under certain circumstances. The issuance of such a stay is clearly discretionary with the court. *Glowacki v. Iowa Bd. of Med. Exam'rs*, 501 N.W.2d

539, 541 (Iowa 1993). We review the district court's decision for an abuse of discretion. *Id.*

### **III. Merits**

**A.** Dr. Reveiz claims the original complaint and complete statement of charges should be considered confidential under section 272C.6(4). In the cross-appeal, the Board and intervenor claim the complete statement of charges should be considered a public record. We will first consider the complaint and statement of charges, except for paragraph ten.

Under section 148.6(1), the Board of Medical Examiners, "after due notice and hearing in accordance with chapter 17A," may discipline a medical licensee. The Board must give the licensee written notice of the time and place of the hearing, together with a statement of charges. Iowa Code § 148.7(1). The Board is considered a governmental body, and its documents and records public records, for purposes of the open records law, chapter 22. See Iowa Code § 22.1(1), (3); *Doe v. Iowa State Bd. of Physical Therapy*, 320 N.W.2d 557, 559 (Iowa 1982) ("All records of a state board are public records."). Public records may be examined, copied, published or otherwise disseminated. Iowa Code § 22.2(1).

Some public records are made confidential by statute. See Iowa Code § 22.7 (listing fifty types of confidential records); *Burton v. University of Iowa Hosps. & Clinics*, 566 N.W.2d 182, 189 (Iowa 1997) (finding section 135.41 made certain medical information confidential, notwithstanding chapter 22). In medical

disciplinary proceedings, certain information is made confidential by section 272C.6(4), which provides:

In order to assure a free flow of information for accomplishing the purposes of this section, and notwithstanding section 622.10, all complaint files, investigation files, other investigation reports, and other investigative information in the possession of a licensing board or peer review committee acting under the authority of a licensing board or its employees or agents which relates to licensee discipline are *privileged and confidential*, and are not subject to discovery, subpoena, or other means of legal compulsion for their release to a person other than the licensee and the boards, their employees and agents involved in licensee discipline, and are not admissible in evidence in a judicial or administrative proceeding other than the proceeding involving licensee discipline. . . . However, a final written decision and finding of fact of a licensing board in a disciplinary proceeding, including a decision referred to in section 272C.3, subsection 4, is a public record.

(Emphasis added.) This section “provide[s] confidentiality safeguards to prevent public disclosure of the information in [a patient’s] records.” *McMaster v. Iowa Bd. of Psychology Exam’rs*, 509 N.W.2d 754, 760 (Iowa 1993).

Under section 272C.6(4), all complaint files and investigative data are confidential for purposes “other than the proceeding involving licensee discipline.” During the investigative process, records that come within the confines of section 272C.6(4) are to be seen only by the board. *Portz v. Iowa Bd. of Med. Exam’rs*, 563 N.W.2d 592, 595 (Iowa 1997). “This protects their confidentiality and prevents their being released after the investigation.” *Id.* Once medical disciplinary proceedings are initiated, the information may be

released to the licensee, the board, and its employees and agents. Iowa Code § 272C.6(4).<sup>4</sup>

We determine the notice of hearing and the statement of charges, other than paragraph ten, should be considered public records. Section 148.7(1) provides, “[a] written notice of the time and place of the hearing together with a statement of the charges shall be served upon the licensee . . . .” This information is not specifically made confidential by section 272C.6(4) or any other statute. In the absence of a statute making the information confidential, the information is a public record, which may be examined, copied, published, or otherwise disseminated. See Iowa Code § 22.2(1). We conclude the Board’s interpretation of the relevant statutes, as they apply to the notice of hearing and the bulk of the statement of charges, is not irrational, illogical, or wholly unjustifiable, so as to warrant reversal.

**B.** We turn to the question of the Board’s interpretation of section 272C.6(4) and the court’s conclusion that paragraph ten of the statement of charges should remain confidential under that statute. The Board claims it was required by statute to include a factual basis in the notice and statement of charges against Dr. Reveiz.

Section 17A.12(2)(d) requires that the notice to commence a contested case contain “[a] short and plain statement of the matters asserted.” If an administrative action involves the revocation of a license, the agency must give

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<sup>4</sup> Under certain circumstances, investigative information may be released to appropriate licensing authorities, or if the information indicates a crime has been committed, to the appropriate law enforcement agency. Iowa Code § 272C.6(4). The information may also be released to the office of citizens’ aide, but must remain confidential with that office. *Citizens’ Aide/Ombudsman v. Miller*, 543 N.W.2d 899, 903 (Iowa 1996).

written, timely notice “to the licensee of facts or conduct and the provision of law which warrants the intended action . . . .” Iowa Code § 17A.18(3). In general, a notice must contain a reference to the particular statutes implicated, and a short and plain statement of the matters asserted. *Silva v. Employment Appeal Bd.*, 547 N.W.2d 232, 235 (Iowa Ct. App. 1996). A person must have a reasonable opportunity to know of the claims which affect the person. *Alfredo v. Iowa Racing & Gaming Comm’n*, 555 N.W.2d 827, 833 (Iowa 1996).

The notice pleading provision found in Iowa Rule of Civil Procedure 1.403(1) demands only a “short and plain statement of the claim.” In notice pleading, a petition does not need to allege ultimate facts to support each element of a cause of action. *Rieff v. Evans*, 630 N.W.2d 278, 292 (Iowa 2001). “The petition, however, must contain factual allegations that give the defendant ‘fair notice’ of the claim asserted so the defendant can adequately respond to the petition.” *Rees v. City of Shenandoah*, 682 N.W.2d 77, 79 (Iowa 2004).

Like rule 1.403(1), the notice required to commence a contested case proceeding requires only “[a] short and plain statement of the matters asserted.” See Iowa Code § 17A.12(2)(d); see also *Midwest Carbide Corp. v. Occupational Safety & Health Review Comm’n*, 353 N.W.2d 399, 401 (Iowa 1984) (contrasting the notice provisions of section 17A.12(2) with the more stringent pleading requirements for a petition for judicial review under section 17A.19(4)). We conclude a petition under section 17A.12(2)(d) must also contain factual allegations sufficient to give a defendant “fair notice” of the claim asserted. See *Rees*, 682 N.W.2d at 79.

In medical disciplinary cases the notice requirements must be viewed in the light of section 272C.6(4). As noted above, section 272C.6(4) makes complaint files, investigation files, other investigation reports, and other investigative information “privileged and confidential, and [ ] not subject to discovery, subpoena, or other means of legal compulsion for their release to a person other than the licensee and the boards,” and the board’s employees or agents.

In *Miller v. Iowa Board of Medical Examiners*, 609 N.W.2d 478, 482 (Iowa 2000), the Board’s investigator had destroyed his field notes when the formal complaint against the licensee had been filed. The supreme court determined the field notes were the type of investigative information that came within the statutory provisions of section 272C.6(4), and should have been revealed to the licensee when disciplinary proceedings were initiated. *Miller*, 609 N.W.2d at 483. Thus, *Miller* interprets section 272C.6(4) as applying to information relating to the Board’s investigation of a medical licensee. *Id.*

The district court found, “To the degree these documents incorporate patient-specific information garnered through an investigation undertaken by or on behalf of the respondent, it remains confidential and may not be disseminated to the public.” Sections 17A.12(2) and 17A.18(3) require that some factual allegations must be included in the notice. In a medical license revocation proceeding, that factual information would necessarily come from the Board’s investigation. Thus, not all information garnered by the Board’s investigation can be kept privileged and confidential. We determine the limited information used in

paragraph ten of the statement of charges in this case does not offend the confidentiality requirements of section 272C.6(4).<sup>5</sup>

We conclude the Board's interpretation of section 272C.6(4), which would allow it to use limited information obtained through the Board's investigation in the statement of charges, is not irrational, illogical, or wholly unjustifiable. See Iowa Code § 17A.19(10)(f). We reverse the district court's decision finding paragraph ten must be kept confidential under section 272C.6(4).

**C.** In the appeal, Dr. Reveiz has raised an argument about certain rules promulgated by the Iowa Board of Medical Examiners. This issue was not raised before the district court, and we conclude it has not been preserved for our review. See *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) (noting we do not consider issues raised for the first time on appeal).

We affirm the decision of the district court finding the notice of hearing and most of the statement of charges were public records. We reverse the district court's determination that paragraph ten of the statement of charges must be kept confidential under section 272C.6(4).

**AFFIRMED IN PART AND REVERSED IN PART.**

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<sup>5</sup> We do not address the question of whether a statement of charges could possibly reveal too much information which is made confidential by section 272C.6(4). We note section 272C.6(4) provides "confidentiality safeguards to prevent public disclosure of [a patient's] records." *McMaster*, 509 N.W.2d at 760. In the present case, we merely find the statement of charges here does not violate the statute.