

**IN THE COURT OF APPEALS OF IOWA**

No. 8-1008 / 07-0332  
Filed February 4, 2009

**JOHN DOE, D.O.,**  
Petitioner-Appellant,

**vs.**

**IOWA BOARD OF MEDICAL EXAMINERS,**  
Respondent-Appellee.

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No. 8-1025 / 08-0064

**RONNIE B. MARTIN, D.O.,**  
Petitioner-Appellant,

**vs.**

**IOWA BOARD OF MEDICINE,**  
Respondent-Appellee.

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Consolidated appeals from the Iowa District Court for Polk County, Richard G. Blane II (John Doe), and Karen A. Romano (Ronnie B. Martin), Judges.

A non-resident physician appeals from district court rulings upholding the decisions of the Iowa Board of Medical Examiners. **AFFIRMED AND REMANDED.**

Michael M. Sellers of Sellers Law Office, Des Moines, for appellants.

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

Considered by Vogel, P.J., and Vaitheswaran and Potterfield, JJ.

**POTTERFIELD, J.**

In this consolidated appeal, Ronnie B. Martin challenges the rulings of the district court that affirm the decisions of the Iowa Board of Medical Examiners (Board).<sup>1</sup> We find Martin's first petition for judicial review was untimely and affirm the district court's dismissal. With respect to his second petition for judicial review, the district court did not err in finding the Board had authority with respect to Martin's licensure. We remand to the Board.

**I. Background Facts and Proceedings**

This proceeding stems from matters referred to the Board of Medical Examiners concerning Dr. Ronnie B. Martin's practice of medicine in Iowa. Martin is a family practice physician who received his license to practice medicine in Iowa in 1999. He later moved to Florida, and his Iowa license became inactive in December 2002 and expired in February 2003. Three years later, on February 3, 2006, the Board found probable cause to issue an order for a comprehensive clinical competency evaluation based on information sent to the Board regarding Martin's practice in Iowa. See Iowa Code § 272C.9(1) (2005 Supp.). Martin objected to the order and requested a hearing. See Iowa Admin. Code r. 653-12.3 (2005).

A contested case hearing was held on June 21, 2006, at which Martin moved to dismiss, arguing the Board had no authority to order an evaluation of a non-resident doctor with an expired Iowa license. The Board denied the motion to dismiss and the hearing continued on the merits of Martin's objections to the competency evaluation.

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<sup>1</sup> Now known as the board of medicine. See Iowa Code § 147.13(1) (2007 Supp.).

In a written ruling dated July 13, 2006, the Board confirmed its previous denial of the motion to dismiss and held it had jurisdiction to order Martin to submit to a competency evaluation and that there was probable cause to order Martin to submit to a professional competency examination. The Board ordered Martin to comply within sixty days. The ruling was mailed by certified mail to Martin's attorney on July 14, 2006.

Martin filed his petition for judicial review of the order on August 15, 2006. The district court dismissed the petition as untimely. Martin appealed that dismissal.

On September 14, 2006, while Martin's appeal was pending, the Board issued a statement of charges against Martin alleging a violation of the previous order requiring a professional competency examination within sixty days. Martin again filed a motion to dismiss arguing, among other things, that his appeal of the previous order made the charges premature. On March 28, 2007, a contested case hearing was scheduled to take place before the Board. At the time of the hearing, the parties asked—and the Board agreed—to continue the evidentiary hearing and instead hear arguments on Martin's motion to dismiss. On April 30, 2007, the Board issued a decision denying the motion to dismiss. The evidentiary hearing was re-scheduled for May 22, 2007.

On May 15, 2007, however, Martin filed a second petition for judicial review asking the district court to reverse the ruling on his motion to dismiss. Martin sought and received a stay of the evidentiary hearing. The Board argued the petition for judicial review should be dismissed as there was no final agency

action from which Martin was entitled to appeal. On December 18, 2007, the district court ruled:

There has not been final agency action in the sense that no discipline has actually been imposed; however, Dr. Martin is only seeking judicial review of the legal issues surrounding the Board's denial of his motion to dismiss. The issues of the Board's jurisdiction and authority to discipline Dr. Martin were fully decided in the Board's April 30, 2007 decision and are final agency action on those issues. Therefore, the Court determines that there is final agency action as to the legal issues that Dr. Martin has sought to have this Court review.

. . . If final agency action is not had until discipline is imposed, judicial review at that point is not an adequate remedy for Dr. Martin. . . . [O]nce discipline is imposed it is public and cannot be stayed pending judicial review. The issues in this case, and the prior case now on appeal, revolve around whether the Board can order a competency evaluation of Dr. Martin, and if Dr. Martin can be disciplined if he has refused to complete the evaluation despite that issue being on appeal. If it is determined that either (1) the Board cannot order Dr. Martin to complete a competency evaluation; or (2) that Dr. Martin did not refuse to complete the evaluation then discipline would not be imposed. If judicial review is not allowed at this time, the discipline likely will be imposed and that is a consequence which cannot be "undone" even by a subsequent reversal by the courts. Therefore, the court concludes that even if the current matter is not final agency action, Dr. Martin has established that intermediate judicial review is appropriate.

(Footnote omitted.)

The district court then rejected Martin's argument that the Board does not have authority to pursue disciplinary action against a nonresident physician with an expired license for an alleged failure to comply with an evaluation order. The court affirmed the Board's ruling that it had jurisdiction and authority to discipline Martin and remanded to the Board for a determination on the factual issue of Martin's compliance. Martin appealed.

The two appeals have been consolidated for purposes of our consideration.

## II. Scope and Standard of Review

We review a contested administrative proceeding for errors of law. Iowa Code § 17A.19(8); *Arora v. Iowa Bd. of Medical Exam'rs*, 564 N.W.2d 4, 6 (Iowa 1997). Our review under Iowa Code section 17A.20 is limited to determining whether the district court correctly applied the law in exercising its judicial review function under Iowa Code section 17A.19(8). *Arora*, 564 N.W.2d at 6.

## III. General Statutory Framework

Martin is a doctor of osteopathy and, as such, was required to obtain a license to practice medicine in the State of Iowa. See Iowa Code §§ 147.2, 147.5 (2005 Supp.). Martin received an Iowa medical license in 1999, which is presumptive evidence of his right to practice medicine in this state. *Id.* § 147.6 (“Every license issued under this subtitle shall be presumptive evidence of the right of the holder to practice in this state the profession therein specified.”). Under Iowa Code section 272C.9(1):

Each licensee . . . as a condition of licensure, is under a duty to submit to a physical, mental, or clinical competency examination when directed in writing by the board for cause . . . . The licensing board, upon probable cause, shall have the authority to order physical, mental, or clinical competency examination, and upon refusal of the licensee to submit to the examination the licensing board may order that the allegations pursuant to which the order of . . . examination was made shall be taken to be established.

The Board ordered Martin, an Iowa licensee, to present himself for a competency evaluation. Martin sought judicial review of the Board’s order, contending that he is not subject to the authority of the Board because his Iowa medical license had expired. The district court dismissed the petition as untimely.

#### IV. The Dismissal of Martin's First Petition

The Board's competency evaluation order was dated July 13, 2006, and was sent to Martin's counsel by certified mail on July 14, 2006. Martin's petition for judicial review was mailed on August 11 and file-stamped on August 15, 2006. The district court dismissed the petition for judicial review as untimely.

On appeal, Martin contends that the Board's decision was not a contested case decision subject to the thirty-day requirement of Iowa Code section 17A.19(3). He also argues that if the order was a contested case decision, the time began to run when he received the ruling, not when it was mailed. We reject both arguments.

A "contested case" is defined as a proceeding in which the legal rights, duties, or privileges of a party are required by Constitution or statute to be determined by an agency after an opportunity for an evidentiary hearing. This evidentiary hearing is an oral proceeding whose purpose is to determine disputed facts of particular applicability known as adjudicative facts—the who, what, when, where, and why of particular individuals in specified circumstances. If a hearing is not required, or the hearing required is not an evidentiary hearing, the adjudication will be categorized as "other agency action."

*Purethane, Inc. v. Iowa State Bd. of Tax Review*, 498 N.W.2d 706, 708-09 (Iowa 1993) (internal citations and quotations omitted).

Martin objected to the evaluation order and asked for a hearing. By administrative rule, the hearing requested "shall be considered a contested case proceeding and shall be governed by" the Board's procedural rules for contested case hearings. Iowa Admin. Code r. 653-12.3(3).<sup>2</sup> At the beginning of the June

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<sup>2</sup> Iowa Admin. Code 653 r. 12.3(3) (2005) provides:

*Objection to order.* A licensee who is the subject of a board order and who objects to the order may file a request for a hearing. The request for

21, 2006 hearing, it was announced that the matter was a contested case. Martin was represented by counsel; motions were considered; evidence and testimony were offered. We find no merit to Martin's present contention that the Board's ruling was not a contested case proceeding. See *Purethane*, 498 N.W.2d at 709 (noting that under agency rules a controversy regarding a dismissal of a protest of assessment is a "contested case" and a formal evidentiary hearing is provided); see also *Paulson v. Bd. of Med. Exam'rs*, 592 N.W.2d 677, 680 (Iowa 1997) (finding that where procedural rule called for a hearing, the order that issued was "a final decision in a contested case").

A petition for judicial review "must be filed within thirty days after the issuance of the agency's final decision in a contested case." Iowa Code § 17A.19(3) (2005). Because the Board's evaluation order constituted a final decision in a contested case, Martin was required to file his petition for judicial review within thirty days after the "issuance" of the order. The district court found that the order "issued" on the date of certified mailing—July 14, 2006. This finding is consistent with the holding in *Purethane*, 498 N.W.2d at 710. In *Purethane*, our supreme court addressed the question of when an Iowa State Board of Tax Review order "issued" for purposes of determining the statutory

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hearing shall specifically identify the factual and legal issues upon which the licensee bases the objection. The hearing shall be considered a contested case proceeding and shall be governed by the provisions of rules 12.11(17A) to 12.43(242C). A contested case involving an objection to an examination order will be captioned in the name of Jane Doe or John Doe in order to maintain the licensee's confidentiality.

The rule has been amended and is now found at rule 24.4(3), but the rule continues to provide that a licensee who objects to an evaluation order may ask for a hearing and the "hearing shall be considered a contested case proceeding and shall be governed by the provisions of 653 – Chapter 25 [entitled 'contested case proceedings']."

appeal. The court ruled: “Absent board rules which make decisions public by filing and entry, this date means the date the order is mailed by certified mail.” *Id.* at 710.

As already noted, the Board’s evaluation order was mailed by certified mail to Martin on July 14, 2006. Martin nonetheless argues that the *Purethane* decision must be read to mean that the appeal period began to run on the date he received the decision because that is the date on which the parties became aware of the ruling. This reading is contrary to *Purethane* and without support. The Board’s ruling issued on the date it was mailed by certified mail—July 14, 2006.

The Iowa Supreme Court has explicitly stated that the filing requirement of section 17A.19(3) is jurisdictional and untimely filing of the petition requires dismissal of the action. *See Sharp v. Iowa Dep’t of Job Serv.*, 492 N.W.2d 668, 669-70 (Iowa 1992). Mailing of the notice to the clerk’s office does not constitute filing in the clerk’s office for purposes of section 17A.19(3). *Id.* at 669. In this case, the petition was filed on August 15, beyond the thirty-day period provided by section 17A.19(3) for its filing. Consequently, the district court lacked jurisdiction to consider the petition and properly dismissed it. *Sharp*, 492 N.W.2d at 669-70; *accord Strickland v. Iowa Bd. of Med.*, No. 07-1805 at 6-7 (Iowa Ct. App. Jan. 22, 2009). Accordingly, the district court’s ruling dismissing the first petition for judicial review is affirmed.



## V. The District Court's Ruling on Martin's Second Petition

In his second petition for judicial review, Martin challenged the Board's authority to pursue disciplinary action against him—a non-resident physician who holds an expired Iowa medical license. His motion to dismiss was denied by the Board. On judicial review, the district court affirmed the denial, concluding that the Board did have jurisdiction and authority to pursue the disciplinary action. The district court noted that the competency issues arose during the time Martin was practicing in Iowa; it concluded the Board's discipline related to matters that affect the citizens and residents of Iowa because the underlying complaints occurred while Martin was practicing in this State.

On appeal, Martin argues the Board does not have jurisdiction or authority to pursue disciplinary action against him because his license has lapsed and is therefore invalid. He states that the Board's authority to impose discipline is further restricted to circumstances directly and presently affecting the citizens of Iowa, citing Iowa Code sections 272C.1(4)<sup>3</sup> and 272C.3<sup>4</sup>.

We address the merits of Martin's appeal despite the fact that there is not yet final agency action in this disciplinary matter. The district court allowed intermediate review. See Iowa Code § 17A.19(1) (authorizing intermediate review "if all adequate administrative remedies have been exhausted and review of the final agency action would not provide an adequate remedy"). The parties

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<sup>3</sup> Section 272C.1(4) provides: "Licensee discipline' means any sanction a licensing board may impose upon its licensees for conduct which threatens or denies citizens of this state a high standard of professional or occupational care."

<sup>4</sup> Section 272C.3 allows discipline where "the licensee has demonstrated a lack of qualifications which are necessary to assure the residents of this state a high standard of professional and occupational care."

have fully briefed and argued the authority of the Board to pursue the disciplinary action against Martin and, if the Board imposes discipline, appeal does not automatically stay that action. We find no error in the district court's granting intermediate review in this particular circumstance.

We conclude Martin reads the Board's authority too narrowly. The Iowa Code specifically grants the Board the power to "[i]nitiate and prosecute disciplinary proceedings" against "licensees." *Id.* § 272C.3 (authority of licensing boards). Martin's argument presumes the only form of licensee is an active or current licensee. On the contrary, the Iowa Code identifies licensees in various stages of practice. For example, section 272C.1(3) defines the process of "inactive licensee re-entry" as the "process a former or inactive professional or occupational licensee pursues to again be capable of actively and competently practicing as a professional or occupational licensee." This language identifies two different types of licensees: active licensees and former/inactive licensees.

Similarly, section 272C.2(2)(f) directs the Board to issue rules for continuing education requirements that "[d]efine the status of active and inactive licensure and establish appropriate guidelines for inactive licensee re-entry." These code sections illustrate that the legislature contemplated that a licensee could be either "active" or "inactive." The legislature gave the Board authority over all licensees. It did not limit the Board's authority only to active licensees.

Moreover, the Iowa Code specifically states that an expired license is not invalid. Iowa Code section 147.10 provides:

Every license to practice a profession shall expire in multiyear intervals and be renewed as determined by the board upon application by the licensee, without examination . . . . *Failure to*

*renew the license within a reasonable time after the expiration shall not invalidate the license, but a reasonable penalty may be assessed by the board.*

(Emphasis added).

This is because a dentist, doctor, lawyer or the member of any other profession, does not devote the years of study and preparation necessary to qualify as a practitioner merely that [the practitioner] may be accorded the right to practice for one year. When [the practitioner] qualifies for the practice, [the practitioner] *does so for life*. That right cannot be taken from [the practitioner] except by due process of law.

*Gilchrist v. Bierring*, 234 Iowa 899, 915, 14 N.W.2d 724, 732 (Iowa 1944) (emphasis added); *accord State v. Otterholt*, 234 Iowa 1286, 1291, 15 N.W.2d 529, 532 (1944) (holding that a professional license is a property right that cannot be taken away without due process and “the mere failure to renew annually does not lessen the value of that license.”). We therefore conclude the Board has authority to discipline all licensees, not only licensees with active Iowa practices.

Under section 272C.9(1), the Board is authorized to order a licensee to submit to a clinical competency examination. The Board is authorized to administer and enforce its administrative rules and to impose licensee discipline. Iowa Code § 272C.3 (2005). Failure to submit to a board-ordered clinical competency examination is grounds for disciplinary action under the applicable administrative rules. Iowa Admin. Code r. 653-12.3(7) (2005). The fact that Martin’s Iowa license has expired does not rob the Board of its authority to discipline.

As our supreme court has stated:

We do not consider the question involved moot, merely because the appellee is not at present making full use of his license to practice. It may be noted that the question whether a provision in a

decree confers a particular right upon a party is not rendered moot on appeal merely because such party testified at the trial that he did not expect to exercise such right. To hold otherwise places in the hands of the accused practitioner himself the power to escape the penalty provided by law for a violation of the rules governing the conduct of his profession, no matter how gross his misconduct may have been. The cause of action has not ceased to exist so long as there remain rights undetermined and all matters involved in the action have not been adjudicated.

*Otterholt*, 234 Iowa at 1291-92, 15 N.W.2d at 532 (internal citations and quotations omitted). The merits of the disciplinary proceeding have not yet been considered. We find only that the Board has the authority to pursue the proceeding.

#### **VI. Conclusion**

Martin's first petition for judicial review was untimely and the district court properly dismissed it. The district court properly concluded that the Board had authority to pursue disciplinary proceedings against Martin, who is an Iowa licensee, even if his license has expired. We affirm and remand for further proceedings.

**AFFIRMED AND REMANDED.**