2016 IL App (1st) 151870-U

SIXTH DIVISION
June 10, 2016

No. 1-15-1870



IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| HOWARD MARTIN,<br><br>Plaintiff-Appellee,<br><br>v.<br><br>THE ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION, and JAY STEWART, Director, Division of Professional Regulation of the Illinois Department of Financial and Professional Regulation,<br><br>Defendants-Appellants. | ) | Appeal from the Circuit Court of Cook County.<br><br>No. 15 CH 1649<br><br>Honorable Mary Lane Mikva, Judge Presiding. |

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Rochford and Justice Hoffman concurred in the judgment.

**ORDER**

¶ 1 ***Held:*** The administrative agency erred in determining the termination of plaintiff's participation in the state's Medicaid program was an act taken by another "jurisdiction" that warranted reciprocal discipline on plaintiff. We affirm.

¶ 2 Following an administrative hearing, the defendant, the Illinois Department of Financial and Professional Regulation (the Department) indefinitely suspended the medical license of plaintiff Howard Martin after the Illinois Department of Healthcare and Family Services (the

DHFS) terminated Martin's participation in the state's "Medical Assistance Program" (Medicaid program).[1] Martin filed a complaint for administrative review, and the trial court reversed the Department's final administrative decision. On appeal, the Department contends that the trial court erred in finding that the DHFS was not a "jurisdiction" under the Medical Practice Act of 1987 (Act) (225 ILCS 60/1 *et seq.* (West 2014)). In the alternative, the Department contends that the DHFS's action in terminating plaintiff from participation in the state's Medicaid program was an adverse action against plaintiff's "authorization to practice medicine." We affirm the judgment of the trial court.

¶ 3 BACKGROUND

¶ 4 Plaintiff Howard Martin, M.D., was an Illinois-licensed physician and surgeon. In November 2011, the DHFS terminated his eligibility to participate in the state's Medicaid program. On July 30, 2013, the Department filed an administrative complaint against Martin. The complaint alleged, among other things, that the DHFS's termination of Martin's participation in the Medicaid program constituted grounds for the indefinite suspension of Martin's license pursuant to section 22(A)(12) of the Act (225 ILCS 60/22(A)(12) (West 2012)). Section 22(A)(12) is a reciprocity provision, allowing suspension of physicians' licenses based upon a "[d]isciplinary action of another state or jurisdiction against a license or other authorization to practice as a medical doctor."

¶ 5 After a hearing on the Department's complaint was held on August 20 and 21, 2014, the Department's Administrative Law Judge (ALJ) sustained the Department's charges against Martin, finding that the DHFS's authority to terminate a physician's participation in the Medicaid program "qualifies [DHFS] as a 'jurisdiction' for purposes of (A)(12)." The ALJ

[1] The DHFS administers the Medicaid program pursuant to section 2-12(3) of the Illinois Public Aid Code. 305 ILCS 5/2-12(3) (West 2014) (citing 305 ILCS 5/5-1 *et seq.* (West 2014)).

recommended an indefinite suspension of plaintiff's license. The Department's Medical Disciplinary Board adopted those findings on November 5, 2014, and recommended that the director of the Department, defendant Jay Stewart, suspend plaintiff's license indefinitely. Plaintiff filed a motion for rehearing, but on January 16, 2015, Stewart denied that motion and entered an final administrative order imposing the recommended indefinite suspension.

¶ 6 Martin then filed a complaint for administrative review in the trial court. Following briefing and argument, the trial court reversed the decision, finding that the DHFS was not a jurisdiction under the statute in effect at the time of plaintiff's hearing before the DHFS.

¶ 7 This appeal followed.

¶ 8 ANALYSIS

¶ 9 On appeal, the Department contends that the trial court erred in finding that the DHFS was not a "jurisdiction" under section 22(A)(12) of the Act, and therefore, the Department had a valid basis to suspend plaintiff's medical license, because the DHFS's termination of plaintiff's participation in the state's Medicaid program was a disciplinary action taken by another jurisdiction. The Department further argues that, even if the DHFS's action did not affect his medical license, the Department nonetheless had grounds to suspend his license pursuant to section 22(A)(12) because the DHFS's termination of plaintiff's participation in the Medicaid program constituted an action against his "authorization to practice medicine."

¶ 10 The Act provides that all final administrative decisions of the Department are subject to judicial review pursuant to the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2016)). 225 ILCS 60/41 (West 2016). The Administrative Review Law provides that judicial review extends to all questions of law and fact presented by the entire record. 735 ILCS 5/3-110 (West 2016). In a case arising under the Administrative Review Law, we review the decision of

the administrative agency, not the determination of the circuit court. *Exelon Corp. v. Department of Revenue,* 234 Ill. 2d 266, 272 (2009).

¶ 11 Resolution of this appeal turns on the construction of section 22(A) of the Act. When construing a statute, our goal is to "ascertain and give effect to the intent of the legislature," which begins with the language of the statute, "the best indicator of legislative intent." *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 361 (2009). If the language is clear and unambiguous, we may not depart from the plain language and meaning of the statute by reading into it exceptions, limitations or conditions that the legislature did not express, nor by rendering any word or phrase superfluous or meaningless. *Kraft, Inc. v. Edgar*, 138 Ill. 2d 178, 189 (1990). If a term is undefined, we must presume the legislature intended it to have its ordinary and popularly understood meaning. *Landis v. Marc Realty, L.L.C.*, 235 Ill. 2d 1, 8 (2009). It is thus appropriate to employ a dictionary to ascertain the meaning of an otherwise undefined word or phrase. *Id.* Moreover, it is well established that, where a word or phrase is used in different sections of the same statute, a court presumes that the word or phrase is used with the same meaning throughout the act, "unless a contrary legislative intent is clearly expressed." *Robbins v. Board of Trustees of Carbondale Police Pension Fund of City of Carbondale, Illinois*, 177 Ill. 2d 533, 541 (1997). Although courts will generally defer to an agency's interpretation of the statutes it administers, that interpretation is not binding and will be rejected if it is erroneous. *Shields v. Judges' Retirement System of Illinois*, 204 Ill. 2d 488, 492 (2003). The construction of a statute is a question of law that we review *de novo*. *Hayashi v. Illinois Department of Financial & Professional Regulation*, 2014 IL 116023, ¶ 16.

¶ 12 When the Department filed its complaint against plaintiff on July 30, 2013, section 22(A)(12) of the Act provided in pertinent part that the Department could suspend an

individual's medical license based upon the "[d]isciplinary action of another state or jurisdiction against a license or other authorization to practice as a medical doctor ***." 225 ILCS 60/22(A)(12) (West Supp. 2013). Setting aside whether the DHFS's termination of plaintiff's participation in the state's Medicaid program was a disciplinary action against plaintiff's medical *license*, the Department erred in finding that the DHFS was a "jurisdiction" under section 22(A)(12) of the Act. The term "jurisdiction" is not defined in the statute, but the plain and ordinary meaning of that term is a "geographic area within which political or judicial authority may be exercised," or a "political or judicial subdivision within such an area." Black's Law Dictionary 928 (9th ed. 2009). Plainly, the DHFS does not exert political or judicial authority within a geographic area, nor is it a political or judicial subdivision within such an area. Thus, even assuming, *arguendo*, that the DHFS's action was a disciplinary action against plaintiff's medical license, the act was nevertheless not that of a jurisdiction. As such, the Department lacked grounds under section 22(A)(12) of the Act to suspend plaintiff's medical license.

¶ 13 The State, however, disputes that conclusion. It first notes that in a different section of the Act, section 22(A)(34), a parenthetical clause after the term "jurisdiction" lists "any *** state or territory of the United States or any foreign state or country." The State then concludes that, the legislature must have intended that the term "jurisdiction" in section 22(A)(12) be "used differently" than in section 22(A)(34) because otherwise the legislature would have included the same parenthetical in section 22(A)(12).

¶ 14 Section 22(A)(34) provides an additional ground for suspension as follows:

> "Failure to report to the Department any adverse final action taken against them by *another licensing jurisdiction* (any other state or any territory of the United States or any foreign state

> or country), by any peer review body, by any health care institution, by any professional society or association related to practice under this Act, *by any governmental agency*, by any law enforcement agency, or by any court for acts or conduct similar to acts or conduct which would constitute grounds for action as defined in this Section." (Emphases added.) 225 ILCS 60/22(A)(34) (West Supp. 2013).

¶ 15 As set forth above, section 22(A)(34) adds the parenthetical after the modified term "licensing jurisdiction," which we construe as clarification that the term "licensing" is not intended to restrict the plain and ordinary meaning of "jurisdiction." This is consistent with the rule that, where the same term appears in different sections of the same statute, we presume that the term has the same meaning throughout the act absent a "*clearly* expressed" legislative intent to the contrary. (Emphasis added.) *Robbins*, 177 Ill. 2d at 541. It would be unreasonable to hold, as the State seeks, that the addition of the parenthetical in section 22(A)(34) is a clear expression of contrary legislative intent.

¶ 16 Moreover, as stated above, if the statutory language is clear and unambiguous, we must adhere to the statute's plain language and meaning and avoid rendering any word or phrase superfluous or meaningless. *Kraft*, 138 Ill. 2d at 189. Under the State's proffered interpretation (*i.e.*, that the term jurisdiction *already includes* state agencies), the term "state agencies" in section 22(A)(34) would be superfluous and the addition of the parenthetical in section 22(A)(34) would be meaningless. The State's argument is thus without merit.

¶ 17 The State also argues that, at the time the Director signed the order indefinitely suspending plaintiff's medical license, section 22(A)(12) had been amended (effective December

30, 2014), and the amended statute should therefore control. Section 22(A)(12) was amended in relevant part to allow the IDFPR to suspend an individual's medical license based upon an "adverse action taken by another state or jurisdiction," which included "*any adverse action taken by a State *** agency that prohibits a medical doctor *** from providing services to the agency's participants.*" (Emphasis added.) See Pub. Act 98-1140 (eff. Dec. 30, 2014) (amending 225 ILCS 60/22(A)(12) (West 2014)). This amendment directly addresses the issue of physicians like Martin who have been barred from the Medicaid program. Martin responds that the amended statute should not be applied retroactively.

¶ 18 In *Commonwealth Edison Co. v. Will County Collector*, 196 Ill. 2d 27, 39 (2001), our supreme court adopted the retroactivity analysis of *Landgraf v. USI Film Products*, 511 U.S. 244 (1994). *Landgraf* sets forth a multi-part test to determine retroactivity. The first step is to determine whether the legislature has clearly indicated the temporal reach of the amended statute. *Id.* at 38. The court in *Caveney v. Bower*, 207 Ill. 2d 82, 94 (2003), however, later determined that, as long as section 4 of the Statute on Statutes (5 ILCS 70/4 (West 2002)) is in effect, an Illinois court will never need to go beyond step one of the *Landgraf* test. The *Caveney* court explained that section 4 is a general saving clause in which "the legislature has clearly indicated the temporal reach of *every* amended statute." (Internal quotation marks omitted and emphasis in the original.) *Id.* at 92. The court further held that section 4 "represents a clear legislative directive as to the temporal reach of statutory amendments and repeals: those that are procedural in nature may be applied retroactively, while those that are substantive may not." *Id.*

¶ 19 Here, the legislature did not indicate that the amendment should be applied retroactively; to the contrary, the Public Act that amended the statute merely contained the standard language that it was to take effect "upon becoming law," which was on December 30, 2014. Pub. Act. 98-

1140 (eff. Dec. 30, 2014); see also *Hayashi*, 2014 IL 116023, ¶ 24 (holding that the statute at issue was prospective only because the Public Act promulgating the relevant provisions took effect "only after the [Public Act's] effective date"); *People v. Smith*, 2014 IL App (1st) 103436, ¶ 97 (holding that the Public Act at issue applied prospectively where it indicated that it took effect "upon becoming law"), *appeal denied*, No. 118038 (Sept. 24, 2014). The December 30, 2014, effective date of the amendment was well after the DHFS terminated plaintiff's participation in Medicaid (in 2011) and after the Department initiated proceedings against plaintiff (in July 2013). Accordingly, section 4 applies, and the question before us is whether the amendment is substantive or procedural.

¶ 20 In this case, we conclude that the changes are substantive rather than procedural. While the distinction between "procedure" and "substance" is not always clear, "procedure" generally prescribes the means for enforcing rights or receiving remedies through a lawsuit. *People v. Atkins*, 217 Ill. 2d 66, 71-72 (2005). In essence, procedure involves the "machinery for carrying on the suit," such as pleading, process, evidence, and practice. *Ogdon v. Gianakos*, 415 Ill. 591, 596 (1953). In contrast, "substantive law" involves the rights *underlying* the lawsuit. *Atkins*, 217 Ill. 2d at 72. In other words, substantive laws establish the rights "whose invasion may be redressed through a particular procedure," such as laws that change the scope of a crime. *Id.*

¶ 21 Applying these principles to the case before us, the amendment to section 22(A)(12) is silent with respect to the pleading, evidence, or practice for the suspension of a medical license. Instead, the amendment is more properly characterized as creating an additional ground for the Department to suspend a medical license: namely, another state agency prohibiting the licensee from providing services to that agency's participants. The State's argument is thus unavailing.

¶ 22 Furthermore, it is axiomatic that the suspension of a professional license carries with it "dire consequences," and that "[i]n a proceeding so serious, due process of law requires a definite charge, adequate notice, and a full, fair and impartial hearing." *Smith v. Department of Registration & Education*, 412 Ill. 332, 344 (1952) (citing *Kalman v. Walsh*, 355 Ill. 341 (1934); *Klafter v. State Board of Examiners*, 259 Ill. 15 (1913); *Schireson v. Walsh*, 354 Ill. 40 (1933)). It is also well established that, although the charges in an administrative proceeding need not have the same precision as a judicial pleading, they must nevertheless "reasonably advise the respondent as to the charges so that he or she will intelligently be able to prepare a defense." *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 93 (1992).

¶ 23 Here, the Department's complaint and plaintiff's hearing before the Department were based upon the *preamended* version of section 22(A)(12). In addition, the hearing took place months before the effective date of the amendment, and scarcely *two weeks* after the amendment's effective date, Stewart issued the order "indefinitely suspending" plaintiff's medical license. On these facts, we cannot hold that the Department provided plaintiff with adequate notice (*Smith*, 412 Ill. at 344) or that it reasonably advised him as to the precise charge so that he could prepare his defense (*Abrahamson*, 153 Ill. 2d at 93). For this same reason, the State's reliance upon *Hayashi* is misplaced. Although the State accurately quotes the *Hayashi* court's holding that a medical license is not a vested right and is subject to continuing regulatory oversight (*Hayashi*, 2014 IL 116023, ¶ 31), the plaintiffs in that case *had* notice of the law under which the Department was proceeding (*Id.* ¶ 9). Here, by contrast, the Department never indicated to plaintiff that it was proceeding under the amended version of section 22(A)(12).

¶ 24 The Department also argues, in the alternative, that plaintiff's participation in the state's Medicaid program constituted an "other authorization to practice as a medical doctor" as set

forth in section 22(A)(12), and therefore the Department was allowed to suspend plaintiff's medical license because the DHFS's termination of his participation in the Medicaid program was an action against this authorization. This argument fails for multiple reasons. First, we have already held that the DHFS is not a jurisdiction, so section 22(A)(12) is not applicable. Second, the amended version of the statute—which the State strongly relies on—applies prospectively only, so the amendment's inclusion of adverse actions taken by State agencies does not arise. Finally, the DHFS's action did not affect plaintiff's authorization to practice medicine, *i.e.*, his license: it only prevented him from being reimbursed by Medicaid. The State's alternative contention of error is therefore meritless.

¶ 25 CONCLUSION

¶ 26 The trial court correctly determined that the Department improperly suspended plaintiff's medical license under section 22(A)(12) of the Act because the DHFS's termination of plaintiff's participation in the state's Medicaid program was neither a disciplinary action taken by "another jurisdiction" nor "other authorization to practice as a medical doctor." Accordingly, we affirm the judgment of the trial court.

¶ 27 Affirmed.