

SUPREME COURT OF ARKANSAS

Baber v. Arkansas State Medical Board, 2010 Ark. 243

368 S.W.3d 897 (2010) · Decided May 20, 2010

SUMMARY

The Arkansas Supreme Court dismissed Dr. James R. Baber’s appeal because the Arkansas State Medical Board had not issued a final agency action. Baber voluntarily surrendered his medical license before the Board ruled on his requests for a restricted license and a closed disciplinary hearing, leaving the circuit court and appellate court without jurisdiction under the Administrative Procedure Act.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Elana Cunningham Wills
JURISDICTION	Arkansas
DECIDED	May 20, 2010
DISPOSITION	dismissed
PROCEDURAL POSTURE	Baber sought judicial review under the Arkansas Administrative Procedure Act of alleged actions and inactions by the Arkansas State Medical Board concerning a closed disciplinary hearing and a restricted medical license. The Washington County Circuit Court dismissed the administrative appeal for lack of jurisdiction because the Board had not taken final action and Baber had voluntarily surrendered his license. The Arkansas Supreme Court dismissed the appeal for lack of appellate jurisdiction.
STANDARD OF REVIEW	Judicial review of an agency decision is directed to the agency's decision rather than the circuit court's decision. The agency decision is upheld if supported by substantial evidence and is not arbitrary, capricious, or characterized by an abuse of discretion. The court also addressed jurisdiction de novo insofar as the existence of final agency action was required for review.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion
PARTIES	James R. Baber, M.D. v. Arkansas State Medical Board, Members of the Arkansas State Medical Board

TOPICS

judicial review of agency action

agency adjudication

administrative procedure act

medical licensing

appellate jurisdiction

PRACTICE AREAS

administrative law

health law

medical licensing

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court had jurisdiction under the Arkansas Administrative Procedure Act to review the Board's attorney's letter stating that Baber's request for a closed hearing would be denied.
2. Whether the circuit court had jurisdiction to review the Board's failure to rule on Baber's request for a restricted medical license.
3. Whether Baber's voluntary surrender of his medical license before the disciplinary hearing constituted or resulted in final agency action subject to judicial review.

HOLDINGS

1. Judicial review under Ark. Code Ann. § 25-15-212 requires final agency action. Because the Board had not adjudicated Baber's requests before he surrendered his license, there was no final agency action for the circuit court to review.
2. The Board attorney's letter stating that Baber's request for a closed hearing would be denied did not constitute final action by the Board itself.
3. The Board's inaction on Baber's request for a restricted license was not final agency action because Baber surrendered his license before the request was presented to the Board for consideration or a vote.
4. Because the circuit court lacked jurisdiction in the absence of final agency action, the Arkansas Supreme Court likewise lacked jurisdiction and was required to dismiss the appeal.

KEY QUOTATIONS

"Because the circuit court was without jurisdiction to consider Dr. Baber's appeal, this court likewise is without jurisdiction and we dismiss the appeal."

"Where there has been no adjudication before the administrative agency, there has been no "final agency action" to be reviewed pursuant to Ark.Code Ann. § 25-15-212."

"The actions of the Board's attorney do not constitute an action of the Board itself."

FACTUAL BACKGROUND

Baber, a physician, notified the Arkansas State Medical Board that he had failed a court-ordered drug test and requested that any sanction be limited to a restriction allowing him to perform administrative medical-review work. The Board initiated disciplinary proceedings and scheduled a hearing concerning possible revocation,

suspension, or other sanctions. Before the hearing, Baber requested a closed hearing and a voluntary license restriction, but he surrendered his license when those requests were not formally decided.

PROCEDURAL HISTORY

Baber notified the Board that he had failed a court-ordered drug test and requested that any sanction be limited to a restricted license. Before the scheduled disciplinary hearing, he requested a closed hearing and a voluntary license restriction. After the Board did not formally rule on those requests, Baber surrendered his license and filed an APA action in circuit court. The circuit court dismissed the action for lack of final agency action, and the Supreme Court dismissed the appeal for lack of jurisdiction.

DISPOSITION

dismissed

CASES CITED

- Collie v. Arkansas State Medical Board, 370 Ark. 180, 258 S.W.3d 367 (2007)
- Arkansas Professional Bail Bondsman Licensing Board v. Frawley, 350 Ark. 444, 88 S.W.3d 418 (2002)
- Arkansas State University v. Professional Credit Management, 2009 Ark. 153, 299 S.W.3d 535