

SUPREME COURT OF NORTH DAKOTA

Gale v. North Dakota Board of Podiatric Medicine

2001 ND 141 (N.D. 2001) · No. No. 20010032 · Decided July 30, 2001

SUMMARY

The Supreme Court of North Dakota affirmed dismissal of Dr. Brian Gale's appeal from a disciplinary order issued by the North Dakota Board of Podiatric Medicine. The court held that Gale waived his right to challenge the Board's factual findings by stipulating that independent reviewers' findings would be binding and nonappealable. The disciplinary order revoked Gale's license, stayed revocation during a five-year probationary period, limited his practice to non-operative care, and imposed retraining and costs.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Maring, Justice; William A. Neumann, Acting Chief Justice; Dale V. Sandstrom, Justice; Lawrence A. LeClerc, District Judge; William W. McLees, District Judge
JURISDICTION	North Dakota
DECIDED	July 30, 2001
DOCKET	No. 20010032
DISPOSITION	affirmed
PROCEDURAL POSTURE	Gale appealed from a district court judgment dismissing his appeal from a North Dakota Board of Podiatric Medicine disciplinary order. The Supreme Court of North Dakota affirmed the dismissal.
STANDARD OF REVIEW	Whether a waiver existed was a question of law because the circumstances were admitted or clearly established and reasonable persons could draw only one conclusion. The court reviewed the district court's conclusion that Gale waived his right to appeal.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion
PARTIES	Dr. Brian D. Gale v. North Dakota Board of Podiatric Medicine

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QUESTIONS PRESENTED

1. Whether Gale waived his right to challenge the Board's factual findings and the procedures used to reach those findings.
2. Whether the district court properly dismissed Gale's appeal from the Board's disciplinary order.

HOLDINGS

1. A party to an administrative proceeding may waive the right to an appeal, and a stipulation expressly providing that independent reviewers' factual findings are binding and nonappealable constitutes an effective waiver.
2. Gale waived his right to challenge the Board members' findings of fact and related fact-finding procedures; the district court therefore properly dismissed his appeal from the Board's disciplinary order.

KEY QUOTATIONS

“Waiver is a voluntary and intentional relinquishment of a known existing advantage, right, privilege, claim, or benefit.” (¶ 14)

“Once the right is waived, the right or privilege is gone forever, and the waiver cannot be extracted, recalled, or expunged.” (¶ 14)

FACTUAL BACKGROUND

Gale, a North Dakota podiatrist, was the subject of a formal disciplinary complaint concerning his treatment of five patients and alleged violations of North Dakota law governing podiatric discipline. He twice agreed in writing to waive an administrative hearing and to make the independent reviewers' factual findings binding and nonappealable. After review by four Board members, the Board found that Gale had failed to properly treat and care for the patients and imposed license revocation stayed for five years, practice restrictions, retraining, and fees and costs.

PROCEDURAL HISTORY

The Board imposed discipline after Gale entered agreements waiving an administrative hearing and agreeing that independent reviewers' factual findings would be binding and nonappealable. The Board revoked Gale's license, stayed the revocation during a five-year probationary period, limited his practice to nonoperative care, ordered retraining, and assessed fees and costs. Gale appealed to district court, which dismissed the appeal on waiver grounds and alternatively concluded the evidentiary record supported the Board's decision; the Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Gale v. North Dakota Board of Podiatric Medicine, 1997 ND 83, 562 N.W.2d 878
- Steen v. North Dakota Department of Human Services, 1997 ND 52, ¶ 35, 562 N.W.2d 83
- Stuart v. Stammen, 1999 ND 38, ¶ 12, 590 N.W.2d 224
- Diversified Financial Systems, Inc. v. Binstock, 1998 ND 61, ¶ 16, 575 N.W.2d 677
- Tormaschy v. Tormaschy, 1999 ND 131, ¶ 12, 596 N.W.2d 337
- Tormaschy v. Tormaschy, 1997 ND 2, ¶ 19, 559 N.W.2d 813
- Hanson v. Cincinnati Life Insurance Co., 1997 ND 230, ¶ 13, 571 N.W.2d 363
- Keator v. Gale, 1997 ND 46, 561 N.W.2d 286

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