

SUPREME COURT OF MONTANA

Munn v. Montana Board of Medical Examiners

329 Mont. 401, 2005 MT 303 (2005) · No. No. 04-543 · Decided December 6, 2005

SUMMARY

The Montana Supreme Court affirmed the district court’s judgment upholding the Montana Board of Medical Examiners’ revocation of Nathan A. Munn’s medical license for engaging in an improper sexual relationship with a patient. The Court held that the Board lawfully increased the hearing examiner’s recommended sanction after reviewing the complete record and that the revocation was not clearly erroneous, arbitrary, or capricious.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Justice John Warner; John Warner; James C. Nelson; Patricia O. Cotter; Brian Morris; W. William Leaphart; Karla M. Gray; Jim Rice
JURISDICTION	Montana
DECIDED	December 6, 2005
DOCKET	No. 04-543
DISPOSITION	affirmed
PROCEDURAL POSTURE	Munn appealed the First Judicial District Court's affirmance of the Montana Board of Medical Examiners' order revoking his medical license.
STANDARD OF REVIEW	Under § 2-4-704(2), MCA, the court may not substitute its judgment for the agency's judgment on the weight of the evidence and may reverse or modify an agency decision only when substantial rights were prejudiced by specified statutory, procedural, legal, evidentiary, arbitrary-and-capricious, or abuse-of-discretion grounds. Clear-error review asks whether findings are supported by substantial evidence, whether the deciding body misapprehended the effect of the evidence, and whether the record leaves the reviewing court with a definite and firm conviction that a mistake occurred. Conclusions of law are reviewed for correctness.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Nathan A. Munn v. Montana Board of Medical Examiners

TOPICS

medical licensing administrative law agency adjudication judicial review of agency action
statutory interpretation

PRACTICE AREAS

administrative law professional licensing medical licensing health law appellate procedure

QUESTIONS PRESENTED

1. Whether the Board acted contrary to law by imposing a harsher penalty than the penalty recommended by the hearing examiner.
2. Whether the Board's revocation of Munn's medical license was clearly erroneous, arbitrary, or capricious.

HOLDINGS

1. Under § 2-4-621(3), MCA, the Board may increase a hearing examiner's recommended penalty after reviewing the complete record; the Board therefore did not act contrary to law by revoking Munn's license.
2. The Board's decision to increase the recommended penalty and revoke Munn's license was not arbitrary or capricious and was not clearly erroneous.

KEY QUOTATIONS

“The statute makes clear that the Board may increase a recommended penalty, but it must review the complete record to do so.” (¶19)

“Section 2-4-621(3), MCA, makes it clear that the Board itself has the final say as to what is an appropriate sanction.” (¶28)

“It only requires the Board to examine the entire record before increasing the sanction proposed by the hearing examiner.” (¶30)

FACTUAL BACKGROUND

Nathan Munn, a Montana psychiatrist, treated Jane Doe from 1997 through 1999 and continued prescribing medication to her after they began a sexual relationship in July 1999. The relationship continued for approximately two years, and the hearing examiner found that Munn exploited Doe through the physician-client relationship and engaged in unprofessional conduct. A hearing examiner recommended probation and a 90-day suspension, but the Montana Board of Medical Examiners reviewed the complete record and revoked Munn's license, subject to a two-year bar on reapplication.

PROCEDURAL HISTORY

After a hearing examiner found that Munn engaged in unprofessional conduct by having a sexual relationship with a patient, the examiner recommended probation and a 90-day suspension. The Board reviewed the complete

record, accepted the examiner's findings and conclusions, but increased the sanction to revocation, with no ability to reapply for two years. The District Court affirmed the Board's decision, and the Montana Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Weitz v. Mont. Dep't of Natural Res. & Conservation, 284 Mont. 130, 943 P.2d 990 (1997)
- Tipp v. Skjelset, 285 Mont. 274, 947 P.2d 480 (1997)
- Carbon County v. Union Reserve Coal Co., Inc., 271 Mont. 459, 898 P.2d 680 (1995)
- Dep't of Soc. & Rehab. Servs. v. Shodair Hosp., 273 Mont. 155, 902 P.2d 21 (1995)
- Frazier Sch. Dist. No. 2 v. Flynn, 225 Mont. 299, 732 P.2d 409 (1987)
- Ulrich v. State Bd. of Funeral Serv., 1998 MT 196, 289 Mont. 407, 961 P.2d 126
- Brackman v. Bd. of Nursing, 258 Mont. 200, 851 P.2d 1055 (1993)
- Moran v. Shotgun Willies, Inc., 270 Mont. 47, 889 P.2d 1185 (1995)