

SUPREME COURT OF VERMONT

Shaddy v. State of Vermont Office of Professional Regulation

197 Vt. 625 (2014) · No. 2013-303 · Decided September 19, 2014

SUMMARY

The Vermont Supreme Court held that the State of Vermont could appeal a Board of Nursing decision under 3 V.S.A. § 130a(a). It further held that attorneys for the Office of Professional Regulation represent the State and may exercise the State’s appellate authority in professional disciplinary proceedings. The court reversed the superior court and reinstated the appellate officer’s decision reversing the Board’s order vacating a consent suspension.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Dooley, J.; Reiber, C.J.; Skoglund, J.; Robinson, J.
JURISDICTION	Vermont
DECIDED	September 19, 2014
DOCKET	2013-303
DISPOSITION	reversed
PROCEDURAL POSTURE	Interlocutory appeal from a superior court order remanding a professional-discipline matter to the Vermont Board of Nursing for clarification regarding whether its decision vacating a consent order represented a decision not to prosecute. The superior court had reversed or effectively rejected the appellate officer's decision because it concluded that an OPR attorney lacked authority to appeal the Board's decision.
STANDARD OF REVIEW	The Court construed the governing statutes de novo. Under 3 V.S.A. § 130a(b), an appellate officer conducts on-the-record review and is generally bound by the Board's factual findings, subject to the statutory grounds for reversal.
PRECEDENTIAL VALUE	Published Vermont Supreme Court opinion; precedential.
PARTIES	State of Vermont Office of Professional Regulation v. David Shaddy

TOPICS

appellate jurisdiction

interlocutory appeal

administrative law

statutory interpretation

legislative intent

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the State could appeal the Board of Nursing's decision under 3 V.S.A. § 130a(a).
2. Whether an attorney for the Office of Professional Regulation had authority to represent the State and pursue that appeal.

HOLDINGS

1. The State was a party to the disciplinary proceeding and could appeal the Board's adverse decision under 3 V.S.A. § 130a(a).
2. An attorney assigned by the Office of Professional Regulation represents the State of Vermont in professional disciplinary proceedings and may exercise the State's power to appeal an adverse board decision under 3 V.S.A. § 130a(a).

KEY QUOTATIONS

“Thus, OPR attorneys represent the State of Vermont and may exercise the State’s power to appeal from an adverse decision of a board pursuant to 3 V.S.A. § 130a(a).” (¶ 16)

FACTUAL BACKGROUND

Brattleboro Retreat reported that David Shaddy, while working as a nurse, improperly took possession of narcotic drugs. The Board of Nursing approved a consent order continuing Shaddy's suspension and establishing conditions for reinstatement. Shaddy later sought relief under V.R.C.P. 60(b)(6), and the Board vacated the consent order and dismissed the charges without prejudice; an OPR attorney appealed that decision on behalf of the State.

PROCEDURAL HISTORY

The Board of Nursing vacated a consent order suspending Shaddy's nursing license and dismissed the disciplinary charges without prejudice under V.R.C.P. 60(b)(6). An OPR attorney appealed on behalf of the State under 3 V.S.A. § 130a(a), and an appellate officer reversed the Board's decision. Shaddy appealed to the superior court, which ruled that the OPR attorney lacked authority to appeal and remanded to the Board for clarification. The superior court granted an interlocutory appeal, and the Vermont Supreme Court reversed and reinstated the appellate officer's decision.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The superior court judgment was reversed, and the appellate officer's decision was reinstated.

CASES CITED

- Shaddy v. Brattleboro Retreat, 2012 VT 67, 192 Vt. 215, 57 A.3d 700
- Shaddy v. Department of Labor, 2009 VT 103, 186 Vt. 633, 987 A.2d 311
- In re Lakatos, 2007 VT 114, 182 Vt. 487, 939 A.2d 510
- Office of Professional Regulation v. McElroy, 2003 VT 31, 175 Vt. 507, 824 A.2d 567 (mem.)
- In re Smith, 169 Vt. 162, 730 A.2d 605 (1999)
- State v. Wesco, Inc., 2006 VT 93, 180 Vt. 345, 911 A.2d 281
- State's Attorney v. Attorney General, 138 Vt. 10, 409 A.2d 599 (1979)
- Lydy v. Trustaff, Inc./Wausau Ins. Co., 2013 VT 44, 194 Vt. 165, 76 A.3d 150

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