

THIRD DISTRICT COURT OF APPEAL OF FLORIDA

Valls v. State of Florida, Department of Health

255 So. 3d 515 (Fla. 3d DCA 2018) · No. No. 3D18-1825 · Decided October 10, 2018

SUMMARY

The Florida Third District Court of Appeal denied Dr. Arnaldo Valls's petition for review of a nonfinal agency action restricting his medical license. The court held that the Department of Health's emergency restriction order adequately demonstrated an immediate serious danger to public health and was likely necessary to prevent continued performance of suction-assisted lipectomy and fat transfer. The restriction was deemed narrowly tailored because it prohibited only those procedures rather than all surgery or plastic surgery.

CASE DETAILS

COURT	Third District Court of Appeal of Florida
WRITING FOR THE COURT	EMAS, J.; LOGUE, J.; LUCK, J.
JURISDICTION	Florida
DECIDED	October 10, 2018
DOCKET	No. 3D18-1825
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Original-jurisdiction petition for review of a nonfinal agency action. The Florida Department of Health issued an emergency restriction prohibiting Dr. Valls from performing suction-assisted lipectomy and fat transfer pending a full administrative proceeding.
STANDARD OF REVIEW	When an emergency restriction is issued before a hearing, appellate review is limited to the four corners of the agency order, and every element necessary to the order's validity must appear on its face.
PRECEDENTIAL VALUE	Published Florida District Court of Appeal opinion; precedential within the court's jurisdiction unless later limited or overruled.
PARTIES	Arnaldo Valls, M.D. v. State of Florida, Department of Health

TOPICS

medical licensing

judicial review of agency action

administrative law

standard of review

appellate procedure

PRACTICE AREAS

administrative law

health law

medical licensing

appellate procedure

QUESTIONS PRESENTED

1. Whether the Department's Order of Emergency Restriction demonstrated on its face an immediate serious danger to public health, safety, or welfare.
2. Whether the order showed that the complained-of conduct was likely to continue in the absence of the restriction.
3. Whether the restriction was necessary and narrowly tailored to be fair under section 120.60(6), Florida Statutes.

HOLDINGS

1. The Order of Emergency Restriction, on its face, sufficiently demonstrated that Valls's continued performance of suction-assisted lipectomy and fat transfer would present an immediate serious danger to public health, safety, or welfare and that the conduct was likely to continue without the order.
2. The Order of Emergency Restriction was narrowly tailored and fair because it prohibited Valls only from performing suction-assisted lipectomy and fat transfer, rather than prohibiting all plastic surgery or all surgery.

KEY QUOTATIONS

"Where, as here, the order of emergency restriction is issued prior to a hearing, our review is limited to the four corners of the order itself, and every element necessary to its validity must appear on the face of the order." (5)

"We further hold that the Order is narrowly tailored to be fair, as it does not prohibit Dr. Valls from performing all plastic surgery or all surgery in general; rather it restricts Dr. Valls' license by specifically prohibiting him from performing suction-assisted lipectomy and fat transfer." (6)

FACTUAL BACKGROUND

Dr. Arnaldo Valls performed a suction-assisted lipectomy and fat transfer, commonly called a Brazilian Butt Lift, on December 4, 2017. During the fat-injection portion of the procedure, the patient's oxygen levels fell; resuscitation efforts failed, and the patient died. An autopsy attributed the death to fat embolism associated with liposuction and fat transfer, and a Department-retained expert opined that Valls had injected fat into a deeper plane, lacked sufficient training for the procedure, and had practiced outside the scope of his training. The Department concluded that continued unrestricted performance of the procedure posed an immediate serious danger to public health, safety, or welfare and restricted Valls from performing that specific procedure.

PROCEDURAL HISTORY

After a patient died following a suction-assisted lipectomy and fat-transfer procedure, the Department issued an Order of Emergency Restriction of License. Dr. Valls petitioned the Third District Court of Appeal for immediate

review of the nonfinal agency action. The court reviewed the order on its face and denied the petition.

DISPOSITION

writ_denied

CASES CITED

- Nath v. Dep't of Health, 100 So. 3d 1273, 1276 (Fla. 1st DCA 2012)
- Bio-Med Plus, Inc. v. Dep't of Health, 915 So. 2d 669, 673 n. 3 (Fla. 1st DCA 2005)
- Witmer v. Dep't of Bus. and Prof'l Reg., 631 So. 2d 338, 341 (Fla. 4th DCA 1994)
- Kaplan v. Dep't of Health, 45 So. 3d 19, 21 (Fla. 1st DCA 2010)
- Robin Hood Group, Inc. v. Fla. Office of Ins. Reg., 885 So. 2d 393, 396 (Fla. 4th DCA 2004)
- Broyles v. Dep't of Health, 776 So. 2d 340, 341 (Fla. 1st DCA 2001)
- Sanchez v. Dep't of Health, 225 So. 3d 964 (Fla. 1st DCA 2017)

OPINION

PER CURIAM.

Third District Court of Appeal State of Florida Opinion filed October 10, 2018. Not final until disposition of timely filed motion for rehearing. _____ No. 3D18-1825 Lower Tribunal No. 17-22531 _____ Arnaldo Valls, M.D., Petitioner, vs. State of Florida, Department of Health, Respondent. A Case of Original Jurisdiction - Petition for Review of Non-Final Agency Action.

Patino & Associates, P.A., and Ralph G. Patino, for petitioner. Christine E. Lamia (Tallahassee), Chief Appellate Counsel, for respondent. Before EMAS, LOGUE and LUCK, JJ. PER CURIAM. INTRODUCTION Dr. Arnaldo Valls petitions this court for review of a nonfinal agency action by the Florida Department of Health (“the Department”), which issued an Order of Emergency Restriction of License (“the Order”) against Dr. Valls’ license to practice as a physician performing suction-assisted lipectomy and fat transfer in the State of Florida.

For the reasons that follow, we deny the petition for review. BACKGROUND Below is a summary of the factual allegations relied upon by the Department, as set forth in the Order on review: On December 4, 2017, Dr. Arnaldo Valls performed a suction-assisted lipectomy and fat transfer, a surgical procedure commonly marketed and referred to as a “Brazilian Butt Lift.” The Brazilian Butt Lift is a surgical procedure in which the patient undergoes liposuction of fat from the abdominal area, which is then injected into the gluteal area.

Dr. Valls removed fat from the patient’s abdomen and then turned the patient over to begin the transfer of fat to her gluteal area. As Dr. Valls was injecting fat into the patient’s gluteal area, the patient’s oxygen levels fell. Dr. Valls and the surgical team turned the patient over, began CPR and

called emergency medical services. Miami-Dade Fire Rescue responded and transported the patient to the hospital.

However, the patient could not be resuscitated and was pronounced dead. 2 Ten days later, an autopsy was performed on the patient. The medical examiner determined that the cause of death was fat embolism associated with liposuction and fat transfer.

The medical examiner discovered the presence of fat emboli in the heart and lungs, and a hemorrhage of the right inferior gluteal vessel. The Department thereafter requested Dr. Christopher Salgado, M.D., to conduct a review of this matter. Dr. Salgado is a board certified plastic surgeon with expertise in liposuction with fat transfer to the gluteal region.

Based upon his review of the case (which included a review of the autopsy report and Dr. Valls' curriculum vitae), Dr. Salgado opined, inter alia: • Dr. Valls' treatment of the patient fell below the minimum standard of care; • Dr. Valls' treatment fell below the standard of care because he injected fat into the deeper plane rather than the superficial plane.

In doing so, Dr. Valls injected fat into the inferior gluteal vein, which then traveled to the lungs, causing immediate cardiac arrest; • Dr. Valls received training in general surgery but not in plastic and reconstructive surgery. General surgical training does not include training in liposuction for fat injection; • Dr. Valls did not receive sufficient training to be able to perform this procedure; • Dr. Valls practiced outside the scope of his training when he performed this procedure on the patient; 3 • A reasonable physician with Dr. Valls' training and experience would not have performed this procedure.

Relying upon the autopsy findings and the expert review conducted by Dr. Salgado, the Order concluded that Dr. Valls' treatment of the patient failed to meet the minimum standard of care, resulting in a significant medical emergency and, ultimately, the death of the patient.

The Department further concluded that, because Dr. Valls practiced outside the scope of his training in performing this procedure, the danger caused by Dr. Valls' continued unrestricted practice of suction-assisted lipectomy and fat transfer is likely to continue, posing an immediate serious danger to public health, safety or welfare.

On August 8, 2018, the Department issued the Order, signed by the State Surgeon General, which included the above-described allegations, findings of fact and conclusions of law. The Order restricted Dr. Valls' license to practice as a physician by prohibiting him from performing suction-assisted lipectomy and fat transfer in the State of Florida, pending a full administrative proceeding, concluding that any lesser restriction would be insufficient to stop the harm and protect the public from the immediate serious danger posed by Dr. Valls' continued unrestricted practice as a medical doctor.

DISCUSSION 4 Section 458.331(1)(v), Florida Statutes (2017), subjects a physician to discipline, including license restriction, for practicing beyond the scope permitted by law or accepting and performing professional responsibilities which the physician knows or has reason to know he or she is not competent to perform. Section 120.60(6), Florida Statutes (2017) authorizes the Department to take emergency action to restrict a physician's license under the following circumstances and with the following safeguards in place: (6) If the agency finds that immediate serious danger to the public health, safety, or welfare requires emergency suspension, restriction, or limitation of a license, the agency may take such action by any procedure that is fair under the circumstances if: (a) The procedure provides at least the same procedural protection as is given by other statutes, the State Constitution, or the United States Constitution; (b) The agency takes only that action necessary to protect the public interest under the emergency procedure; and (c) The agency states in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances.

The agency's findings of immediate danger, necessity, and procedural fairness are judicially reviewable. Summary suspension, restriction, or limitation may be ordered, but a suspension or revocation proceeding pursuant to ss. 120.569 and 120.57 shall also be promptly instituted and acted upon. 5 Where such an order of emergency restriction has been issued by the Department, the licensee may seek immediate review of that nonfinal agency action by a petition for review filed with an appellate court. § 120.60(6)(c), Fla. Stat. (2018); § 120.68(1)-(2), Fla. Stat. (2018); Fla. R. App.

P. 9.100(c)(3). Where, as here, the order of emergency restriction is issued prior to a hearing, our review is limited to the four corners of the order itself, and every element necessary to its validity must appear on the face of the order. *Nath v. Dep't of Health*, 100 So. 3d 1273, 1276 (Fla. 1st DCA 2012); *Bio-Med Plus, Inc. v. Dep't of Health*, 915 So. 2d 669, 673 n. 3 (Fla.

1st DCA 2005); *Witmer v. Dep't of Bus. and Prof'l Reg.*, 631 So. 2d 338, 341 (Fla. 4th DCA 1994). The factual allegations in the order of emergency restriction must show the complained of conduct is likely to continue, the order is necessary to halt the emergency, and the order is sufficiently narrowly tailored to be fair. *Kaplan v. Dep't of Health*, 45 So. 3d 19, 21 (Fla.

1st DCA 2010); *Bio-Med Plus*, 915 So. 2d at 672. We deny the petition for review of this nonfinal agency action, and hold that, on its face, the specific and detailed nine-page Order of Emergency Restriction amply demonstrates that Dr. Valls' continued performing of suction- assisted lipectomy and fat transfer would present an immediate, serious danger to public health, safety or welfare, and that this conduct is likely to continue in the absence of the Order.

Robin Hood Group, Inc. v. Fla. Office of Ins. Reg., 885 So. 6 2d 393, 396 (Fla. 4th DCA 2004); *Broyles v. Dep't of Health*, 776 So. 2d 340, 341 (Fla. 1st DCA 2001). We further hold that the

Order is narrowly tailored to be fair, as it does not prohibit Dr. Valls from performing all plastic surgery or all surgery in general; rather it restricts Dr. Valls' license by specifically prohibiting him from performing suction-assisted lipectomy and fat transfer.

See *Nath*, 100 So. 3d at 1276; *Sanchez v. Dep't of Health*, 225 So. 3d 964 (Fla. 1st DCA 2017). Petition denied. 7