NO. 1031751

SUPREME COURT OF THE STATE OF WASHINGTON

JASON STEVENS,

Appellant,

v.

WASHINGTON STATE HEALTH MEDICAL ASSISTANT PROGRAM,

Respondents

STATE'S ANSWER IN OPPOSITION TO PETITION FOR REVIEW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

Rules

Constitutional Provisions

I. INTRODUCTION

The state of Washington, Department of Health (Department) has a duty to protect the public from health care providers who commit unprofessional conduct. Upon a finding of misconduct, the Department must impose sanctions on the license under the health professions Uniform Disciplinary Act (UDA).

The Department acted within its authority when it issued a disciplinary order suspending Petitioner Jason Stevens' medical assistant credential based on misconduct involving diversion of controlled substances from Petitioner's workplace and misuse of controlled substances. Throughout this case, Petitioner has continuously argued that the Department is without authority to take action against his credential based on erroneous legal arguments involving the re-issuance of his health care assistant credential as a medical assistant credential, the mechanism by which his renewal fees were paid, and his request for a refund of the renewal fees.

Petitioner's arguments have failed at each level of review. The Department has clear regulatory authority to take action against health care credentials, including Petitioner's medical assistant license.

The petition for discretionary review does not meet any of the criteria for discretionary review under RAP 13.4(b). Review by this Court is unwarranted.

II. ISSUE PRESENTED FOR REVIEW

Did the state of Washington, Department of Health act within its authority under RCW 18.130.180 when it took disciplinary action against Petitioner's state-issued medical assistant credential?

III. COUNTERSTATEMENT OF THE CASE

The Department issued Petitioner a health care assistant credential on October 6, 2011. Petitioner also holds a registered nursing credential from the state of Washington, Board of Nursing (Board). In 2012, the Legislature passed Engrossed Substitute S.B. 6237, directing the Department to stop issuing

"health care assistant" credentials. Engrossed Substitute S.B. 6237, 62nd Leg., Reg. Sess. (Wash. 2012) and creating a new "medical assistant" credential. ESSB 6237. In response, the Department conducted rulemaking to issue a medical assistant credential to everyone holding an active health care assistant credential on July 1, 2013. *See* former WAC 246-826-990(2) (effective date July 1, 2013 Wash State Reg. 13-12-045) *repealed* by Wash. State Reg. 22-02-013.

The Petitioner's health care assistant credential, as well as 20,000 other active health care assistant credentials, were superseded by a medical assistant credential on July 1, 2013. Administrative Record (AR) 205-206. Petitioner then renewed his medical assistant credential two times, on May 19, 2014, and on May 28, 2016. AR 233.

The Department and the Board separately issued charges against Petitioner's medical assistant and registered nursing credentials. These charges were levied in response to Petitioner's diversion of controlled substances from his workplace and

misuse of controlled substances while working as a health care provider. The Board issued a Final Order suspending Petitioner's nursing credential for violation of RCW 18.130.180(6) and (22)(b), statutes governing the use of controlled substances, until he completed a state substance use disorder monitoring program pursuant to RCW 18.130.175. AR 1509.

Following this decision, the Department moved for summary judgment against Petitioner's medical assistant credential, asserting that he was collaterally estopped from re-litigating the Board findings that he violated RCW 18.130.180(6) and (22)(b). The Department tribunal determined that Petitioner's medical assistant credential would be indefinitely suspended until he complied with the Board's order. AR 1735 and 1807.

Petitioner has not challenged any of the factual findings against him but has argued repeatedly that the Department does not have jurisdiction over his medical assistant credential. This argument has failed consistently at the administrative level where

the Final Order was issued, and most recently in the Court of Appeals where, in an unpublished opinion, the Court determined that the Department's Final Order was a valid exercise of the Department's authority. Petitioner is now requesting discretionary review by the Washington Supreme Court.

IV. ARGUMENT AGAINST PETITION FOR REVIEW

Petitioner asserts that the Court of Appeals decision should be reviewed as raising an issue of "substantial public interest" pursuant to RAP 13.4(b)(4). But the application of an unchallenged administrative rule to unchallenged factual findings in a case that impacts only Petitioner does not implicate the broader public interest.

A. There Is No Basis for Discretionary Review Under RAP 13.4(b)(4)

Petitioner fails to offer any persuasive argument or legal authority showing that this case impacts anyone but himself and or otherwise raises an issue of "substantial public interest" under RAP 13.4(b)(4).

This case differs from cases like *State v. Watson*, 155 Wn.2d 574, 577, 122 P.3d 903 (2005), where this Court granted review pursuant to RAP 13.4(b)(4) after finding that the decision rendered by the lower court not only affected parties in the immediate proceeding, involving Drug Offender Sentencing Alternatives (DOSA), but also had the potential to substantially affect *every* DOSA proceeding in Pierce County in the future. *Watson*, 155 Wn.2d at 577. The Supreme Court held that this cascading effect was an issue of "substantial public interest." *Id.*

This case raises no similar issue of "substantial public interest." The effects of the disciplinary action against Petitioner and the appellate decision upholding that disciplinary action were limited to Petitioner and his license, making them of individual, rather than public, interest.

Petitioner's "public interest" argument in this case suggests that the former health care assistant licensees and those renewing their licensees online could be better served by retroactively voiding their credentials to practice. Such an action is

demonstrably *not* in the public interest. If petitioner's argument was upheld, it would effectively undermine the health professions licensing framework of the state. This would have widespread impact on a significant number of active licenses and place a substantial burden on the state.

Additionally, the Petition fails to raise an issue of substantial public interest simply because each argument the Petitioner asserts regarding the invalidity of his medical assistant credential fails.

1. The Department of Health has authority over active, inactive, and expired health care credentials.

As acknowledged by the Court of Appeals, the UDA does not distinguish between expired and active licenses. *Brown v. Chiropractic Quality Assurance Comm'n*, 110 Wn. App. 778, 784, 42 P.3d 976 (2002). The UDA broadly grants the Department jurisdiction "over any person who has held a license and appears to have engaged in unprofessional conduct." *Id*. at 979; *Stevens v. Health Med. Assistant Program*, No. 58194-9-II,

at 7 (Wash. Ct. App. May 14, 2024) (unpublished). Therefore, Petitioner's attempts to invalidate his medical assistant credential are not legally relevant. The Department has authority to take action even against Petitioner's expired, inactive, or superseded credential in the event of misconduct, as he is a person who has held a license and has engaged in unprofessional conduct.

2. The Department of Health issued a valid medical assistant credential, and Petitioner's challenge to the validity of this credential is invalid.

In any event, the medical assistant credential issued to the Petitioner is valid because the Department has authority under the UDA to issue credentials to medical assistants and take disciplinary action against those credentials. RCW 18.130.050. This remains the case for credentials issued via department rule under ESSB 6237. The Petitioner attempts to argue that WAC 246-826-990(2) (now repealed) and RCW 18.360.080 somehow prevented the Department from issuing any new medical assistant credentials. He also argues that by law, his

medical assistant credential could not become valid and effective until after he submitted a request to renew the credential pursuant to RCW 18.360.080(3). However, the Petitioner did not raise either of these arguments or take issue with these provisions in earlier briefs. Instead, Petitioner raised this argument for the first time in the Court of Appeals. In its unpublished opinion, the Court of Appeals cited RAP 2.5 and held that because this argument was first raised on appeal, it cannot be considered. *Stevens*, (unpublished), at 8.

Even if the Petitioner was permitted to bring these arguments, they would still fail. The Legislature authorized the Department to adopt rules necessary to implement ESSB 6237. The Department decided to issue the new medical assistant license to all individuals holding active health care assistant credentials on July 1, 2013, pursuant to WAC 246-826-990(2). Petitioner did not challenge this rule below and thus waived any challenge to it on appeal. In any event, the rule comports with the agency's role of executing legislative intent through rulemaking.

See Hama Hama Co. v. Shorelines Hearings Bd., 85 Wn.2d 441, 536 P.2d 157, 161–62 (1975). The transition to the new medical assistant credential was a valid exercise of the Department's authority. RCW 43.70.280(2) ("the secretary of health may, from time to time, extend or otherwise modify the duration of any licensing . . . period, whether an initial or renewal period, if the secretary determines that it would result in a more economical or efficient operation of state government . . . .").

Upholding Petitioner's argument would run contrary to the Legislature's intent in passing ESSB 6237. Additionally, over 20,000 medical assistant credentials could be invalidated, placing an extreme burden on the state's medical infrastructure. Ultimately, this controversy is one individual's personal disagreement with action taken against his medical assistant license for improper and dangerous workplace misconduct.

3. Petitioner held a valid medical assistant credential from July 1, 2013, through May 28, 2018.

Petitioner held a valid medical assistant credential that was recognized by the Department at the time he was disciplined. The manner in which it was renewed and the person who ultimately submitted the renewal request in no way detracts from the fact that the Department issued and recognized his active license. The Court of Appeals agreed that the manner of renewal was valid, as the Petitioner provided no authority to support his position otherwise. *Stevens*, (unpublished) at 9.

Allowing Petitioner to escape discipline would set a dangerous public health precedent. Petitioner did not seek a refund of fees until after administrative charges were filed against him. Allowing a medical assistant to avoid discipline by trying to retroactively invalidate their license would create a gaping loophole in disciplinary rules designed to protect the public.

4. The fee Petitioner submitted was not refundable and therefore did not invalidate Petitioner's license.

Finally, the renewal fee submitted with Petitioner's application is non-refundable. WAC 246-12-340 states that "[f]ees submitted with applications for initial credentialing, examinations, renewal, and other fees associated with licensing and regulation of the profession are non-refundable." The administrative record plainly shows two applications for renewal with payment were sent to the Department on May 19, 2014, and May 28, 2016. AR 233. Consequently, the application was accepted, the license was renewed, and pursuant to the rule, that fee is non-refundable. Petitioner provides no authority to counter these facts.

V. CONCLUSION

The Department of Health took authorized action against an individual with a state-issued medical assistant credential. Because the Department was authorized to take disciplinary action against Petitioner's credential, and because this action

affects only the Petitioner, his "substantial public interest" argument necessarily fails.

This document contains 1790 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 29th day of July, 2024.

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CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury under the laws of the state of Washington that on the 29th day of July 2024, I caused a true and correct copy of the *State's Answer in Opposition to Petition for Review* to be served in the above-captioned matter upon the parties herein as indicated below:

Brian Christopher Zuanich Zuanich Law PLLC 1420 Fifth Avenue Suite 2200 Seattle, WA 98101	☒ US Mail Postage Prepaid ☒ Email via Supreme Court Filing Portal: brian@zuanichlaw.com

DATED this 29th day of July 2024.

DALENE MARIE MANSAPIT
Paralegal

WASHINGTON STATE ATTORNEY GENERAL'S OFFICE AGRICULTURE & HEALTH DIVISION

July 29, 2024 - 11:35 AM

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