

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

In the Matter of the Appeal of the determination of the Responsible Authority for the Minnesota Board of Medical Practice that certain data about Roger J. Day are accurate and/or complete **FINDINGS OF FACT, CONCLUSIONS, AND ORDER**

PROCEDURAL BACKGROUND

The above-entitled matter came to the Commissioner of Administration for a determination on whether certain data regarding Roger J. Day (“Day”) maintained by the Minnesota Board of Medical Practice (“Board”) are accurate and/or complete.

The parties to this contested case proceeding are:

Roger J. Day
9701 Xebec St NE
Circle Pines, MN 55014

and

Elizabeth Huntley
Executive Director and Responsible Authority
Minnesota Board of Medical Practice
335 Randolph Ave, Suite 140
Saint Paul, MN 55102

Under Minnesota Statutes, section 13.01, the Board is subject to the provisions of Minnesota Statutes, Chapter 13, the Minnesota Government Data Practices Act (the “Act”). Under section 13.02, subdivision 16, Executive Director Elizabeth Huntley is the Responsible Authority for purposes of administration of the Act. Day is the subject of data on individuals that are maintained by the Board.

In correspondence dated November 11, 2022, Day challenged the accuracy and completeness of data that the Board maintained. Specifically, Day disputed data contained within three documents: 1.) a “Findings of Fact, Conclusions, and Order” issued by the Board, dated June 17, 2005; 2.) an “Order Denying Request for Reconsideration” issued by the Board, dated July 13, 2005; and 3.) an “Order Denying Respondent’s Second Request for Reconsideration” issued by the Board, dated January 17, 2006.

In correspondence received by a representative of the Commissioner of Administration on January 5, 2023, Day sought to file a data challenge appeal regarding the three documents maintained by the Board. Day noted in the correspondence that the Board had not yet responded to his challenge. However, the Board responded to the challenge on January 12 by informing him that it determined the data were correct and that his challenge was similar to a previously denied challenge.

In a letter to Day, dated January 20, 2023, the Commissioner of Administration offered the services of the Data Practice Office (“DPO”) in an attempt to resolve the dispute informally, as required under Minnesota Statutes, section 13.04, subdivision 4(d). Day declined the offer to attempt informal resolution.

On February 28, 2023, Assistant Commissioner Elizabeth B. Hayes, acting under delegated authority of the Commissioner of Administration, issued a Notice of and Order for Hearing in this matter. This matter was assigned to Administrative Law Judge Ann C. O’Reilly (“ALJ”).

On July 7, 2023, the Board filed a motion to dismiss the appeal on three grounds: 1.) Day’s challenge was barred by the doctrine of collateral estoppel; 2.) Day failed to state a claim upon which relief could be granted; and 3.) Day’s claims were otherwise moot, or a sham, capricious, or frivolous case under Minn. Rule 1205.1600, subp. 4. The ALJ held an in-person hearing on the motion on August 8, 2023. Day appeared at the hearing on his own behalf without counsel. Assistant Attorneys General Theresa M. Flahaven and Jamal A. Zayed appeared on behalf of the Board at the hearing.

During the hearing, Day responded to the Board’s motion and filed a motion for summary disposition in his favor on two grounds: 1.) The Board failed to respond to his data challenge within 30 days, as required by statute; 2.) The undisputed facts show that the contested data contain inaccurate or incomplete information, requiring removal from the Board’s website and replacement with Administrative Law Judge Barbara L. Neilson’s 2004 Report and Recommendation or a new order removing restrictions on Day’s medical license.

On January 16, 2024, the ALJ issued a recommendation and order on the motions, making the following recommendations:

1. The Board’s motion for dismissal should be granted;
2. Day’s motion for summary disposition should be denied; and
3. The Commissioner should dismiss Day’s appeal under Minnesota Statutes, section 13.04.

On May 9, 2024, DPO informed the parties of their opportunity to “file exceptions and present argument” in writing to the Commissioner of Administration. Additionally, DPO informed the parties that they must file their exceptions within ninety (90) days of the date of the letter. DPO did not receive exceptions from either party, but the Board

submitted a letter requesting the Commissioner adopt the ALJ's recommendations. The record on this matter officially closed on August 13, 2024.

Based on review of the entire record in this matter, including the documents in dispute, correspondence of the parties, and recommendations of the ALJ, Data Practices Office Director Taya Moxley-Goldsmith, acting under delegated authority of Department of Administration Commissioner Tamar Gronvall, hereby adopts the ALJ's recommendations to grant the Board's motion for dismissal, to deny Day's motion for summary disposition, and to dismiss Day's appeal under section 13.04. The Director adopts the ALJ's memorandum in whole, and the attached memorandum is incorporated into this order by reference.

ORDER

IT IS HEREBY ORDERED:

1. The Minnesota Board of Medical Practice's motion to dismiss is GRANTED;
2. Roger J. Day's motion for summary disposition is DENIED;
3. Roger J. Day's appeal is DISMISSED.

DATED: October 15, 2024 _____

Taya Moxley-Goldsmith
Director, Data Practices Office
Minnesota Department of Administration

NOTICE

Any person aggrieved by a final decision in a contested case is entitled to judicial review of the decision under Minnesota Statutes, sections 14.63 to 14.68. A petition for judicial review must be filed with the Minnesota Court of Appeals and served upon the Commissioner of Administration and all parties within 30 days of receipt of the final decision and Order of the Commissioner.

MEMORANDUM

Factual Background

Roger J. Day ("Day") challenged data about himself maintained by the Minnesota Board of Medical Practice ("Board"). Executive Director Elizabeth Huntley is the responsible authority for data maintained by the Board.

In an appeal to the Commissioner of Administration, Day appealed the Board's determination of the accuracy and/or completeness of data contained in three documents that the Board issued and maintained, including: 1.) "Findings of Fact, Conclusions, and Order," dated June 17, 2005; 2.) "Order Denying Request for Reconsideration," dated July 13, 2005; and 3.) "Order Denying Respondent's Second Request for Reconsideration," dated January 17, 2006.

Scope of Authority

The right of an individual who is the subject of public or private data to challenge the accuracy and/or completeness of data is found in Minnesota Statutes, section 13.04, subdivision 4. Subdivision 4 states:

- (a) An individual subject of the data may contest the accuracy or completeness of public or private data about themselves.
- (b) To exercise this right, an individual shall notify in writing the responsible authority of the government entity that maintains the data, describing the nature of the disagreement.
- (c) Upon receiving notification from the data subject, the responsible authority shall within 30 days either:
 - (1) correct the data found to be inaccurate or incomplete and attempt to notify past recipients of inaccurate or incomplete data, including recipients named by the individual; or
 - (2) notify the individual that the responsible authority has determined the data to be correct. If the challenged data are determined to be accurate or complete, the responsible authority shall inform the individual of the right to appeal the determination to the commissioner as specified under paragraph (d). Data in dispute shall be disclosed only if the individual's statement of disagreement is included with the disclosed data.
- (d) A data subject may appeal the determination of the responsible authority pursuant to the provisions of the Administrative Procedure Act relating to contested cases. An individual must submit an appeal to the

commissioner within 60 days of the responsible authority's notice of the right to appeal or as otherwise provided by the rules of the commissioner. Upon receipt of an appeal by an individual, the commissioner shall, before issuing the order and notice of a contested case hearing required by chapter 14, try to resolve the dispute through education, conference, conciliation, or persuasion. If the parties consent, the commissioner may refer the matter to mediation. Following these efforts, the commissioner shall dismiss the appeal or issue the order and notice of hearing.

As indicated above, if the responsible authority of the government entity determines that the challenged data are accurate and/or complete, then the individual has the right to appeal that decision to the Commissioner of Administration. Minnesota Rule 1205.1600 establishes the procedure for appealing a responsible authority's determination. Subpart 1 states:

Pursuant to Minnesota Statutes, section 13.04, subdivision 4 an individual may appeal an adverse determination of a responsible authority to the commissioner of administration. The appeal shall follow the procedures established in Minnesota Statutes, chapter 14, as amended, and the rules of the Office of Administrative Hearings relating to contested case proceedings.

Under Minnesota Statutes, section 13.04, subdivision 4 and Minnesota Rule 1205.1600, the Commissioner of Administration only has authority to hear appeals of determinations regarding the accuracy and/or completeness of data about a data subject. The Commissioner of Administration does not have authority to hear disputes concerning a government entity's processes or procedures or about data that are not about the data subject.

If the parties cannot resolve the case using informal resolution, the Commissioner of Administration orders a contested case hearing before an Administrative Law Judge pursuant to Minnesota Statutes, Chapter 14. The purpose of this hearing is to engage in fact finding and for the ALJ to issue recommendations to the Commissioner of Administration. This administrative proceeding is entirely independent of any other court or administrative procedure that may involve or has involved the parties. The only issues that can be resolved in the proceeding are whether the challenged data are accurate and/or complete.

Minnesota Rule 1400.5500(K) permits an ALJ to "recommend a summary disposition of the case or any part thereof where there is no genuine issue as to any material fact or recommend dismissal where the case or any part thereof has become moot for other reasons."

Minnesota Rule 1205.1600, subpart 4 states, "The administrative law judge, at any stage of the proceedings, after all parties have had an opportunity to present

their views, may recommend dismissal of any sham, capricious, or frivolous case, or any case not within the jurisdiction of the Department of Administration.”

Additionally, Minnesota Rule 1400.6600 states, “In ruling on motions where parts 1400.5100 to 1400.8400 are silent, the [administrative law] judge shall apply the Rules of Civil Procedure for the District Court for Minnesota to the extent that it is determined appropriate in order to promote a fair and expeditious proceeding.”

Here, the Board made a motion for dismissal on three grounds: 1.) Day’s challenge was barred by the doctrine of collateral estoppel; 2.) Day failed to state a claim upon which relief could be granted; and 3.) Day’s claims were otherwise moot, or a sham, capricious or frivolous case as described under Minn. Rule 1205.1600, subp. 4.

During a hearing on August 8, 2023, Day was provided an opportunity to respond to the Board’s motion and to present arguments to the ALJ, and he filed a motion for summary disposition in his favor on two grounds: 1.) The Board failed to respond to his data challenge within 30 days, as required by statute; and 2.) The undisputed facts show that the contested data contain inaccurate or incomplete information requiring removal from the Board’s website and replacement with Administrative Law Judge Barbara L. Neilson’s 2004 Report and Recommendation or a new order removing restrictions on Day’s medical license.

Accordingly, the Board was provided with an opportunity to respond to the motion for summary disposition and to present arguments to the ALJ.

In deciding upon recommendations related to a motion that does not rely upon the record but asserts that an appellant’s allegations fail to support a cognizable legal claim, the ALJ reviews the motion as a motion for failure to state a claim upon which relief can be granted under Minn. R. Civ. P. 12.02.

Additionally, in deciding upon recommendations related to motions of summary disposition, the ALJ must solely determine whether genuine factual disputes exist with regard to material issues. The ALJ must view the evidence in light most favorable to the nonmoving party. The moving party has the initial burden to show there is an absence of any genuine issue regarding material facts. If successful, the burden then shifts to the nonmoving party to show that specific facts are in dispute and a genuine issue exists.

In applying these legal standards, the ALJ issued a recommendation to grant the Board’s motion to dismiss, to deny Day’s motion for summary disposition, and to dismiss Day’s appeal.

The final step is for the Director of the Data Practices Office, under delegated authority from the Commissioner of Administration, to determine whether to accept or reject the ALJ’s recommendations.

The ALJ concluded in the memorandum that the issues Day raised in his data challenge have been fully litigated in several forums since 2005, and it appears that Day is asking the Commissioner to act outside her authority to overturn a settled Board order, which was issued under its quasi-judicial authority. Therefore, the Day is collaterally estopped from relitigating the Board's 2005 order.

Further, the ALJ found that Day's requested relief — for the Commissioner to correct the 2005 Board order by rescinding alterations to ALJ Neilson's Report and Recommendation, compelling the Board to adopt ALJ Neilson's Report and Recommendation as its final order, and ordering the board to issue an "Order of Unconditional License" to Day — was not within the Commissioner's limited authority under section 13.04. Rather, the appropriate process for Day to challenge the Board's 2005 order was to file an appeal with the Minnesota Court of Appeals under Minnesota Statutes, sections 14.63 to 14.68 after the order was issued. Therefore, Day's challenge and appeal fails to state a claim for which relief can be granted because the Commissioner has no authority to grant the relief he seeks.

The ALJ also concluded that Day's appeal should be dismissed under Minn. Rule 1205.1600, subp. 4, which allows an ALJ to "recommend dismissal of any sham, capricious, or frivolous case, or any case not within the jurisdiction of the Department of Administration." The ALJ again noted that the Department of Administration did not have jurisdiction to overturn the Board's 2005 order. Further, the ALJ explained that Day's appeal is without merit because he has been attempting to change or reverse the Board's order through various courts and administrative agencies ever since the order was issued. As noted above, the applicable course of action would have been for Day to file an appeal with the Minnesota Court of Appeals in a timely manner within 30 days of the Board's decision, which he did not do. Therefore, Day's most recent data challenge is merely a sham that should be dismissed as permitted under Minn. Rule 1205.1600, subp. 4.

In reviewing Day's motion for summary disposition, the ALJ concluded in the memo that the Data Practices Act does not provide a sanction or remedy when a responsible authority fails to respond to a data challenge within 30 days. Day has not claimed that he was prejudiced by the Board's delay in response. Therefore, Day was not entitled to a judgment as a matter of law that the challenged data were inaccurate or incomplete.

Additionally, the ALJ found that the undisputed facts did not support summary judgment in favor of Day. The ALJ noted that she did not need to reach the issue of whether any material facts were in dispute because a dismissal on the pleading was warranted. However, the undisputed evidence makes clear that the challenged data are accurate and complete despite Day's disagreement with the

Board's decision or his arguments that the Board should have relied upon different facts when issuing a final order. Therefore, Day was not entitled to summary disposition in his favor because the data provides an accurate and complete record of the Board's actions regarding him and his license.

The Director has reviewed the ALJ's memorandum and adopted it in whole. The Director agrees with the ALJ's conclusions that Day's appeal must be dismissed because he is collaterally estopped from relitigating the 2005 Board order, the Commissioner does not have authority to provide the relief he seeks, and a recommendation for dismissal is appropriate under Minn. Rule 1205.1600, subp. 4. Further, the Director agrees that Day is not entitled to summary disposition simply because the Board did not initially respond to his challenge within 30 days, nor does there appear to be a preponderance of evidence that the data maintained by the Board are incorrect or incomplete. As a result, the Director agrees that the Board's motion to dismiss must be granted, Day's motion for summary disposition must be denied, and Day's appeal must be dismissed.

Conclusion

The Director of the Data Practices Office, under delegated authority from the Commissioner of Administration, concludes that Day is collaterally estopped from relitigating the 2005 Board Order, the Commissioner lacks authority to provide the relief Day seeks, and the ALJ's recommendation for dismissal is appropriate under Minn. Rule 1205.1600, subp. 4. Further, Day has failed to prove by a preponderance of evidence that he is entitled to summary disposition. Therefore, Day's appeal is dismissed.

T.M.G.