

IN THE SUPREME COURT OF THE STATE OF NEVADA

JANET M. GUINN, PH.D.,

No. 36176

Appellant,

vs.

THE STATE OF NEVADA, EX REL. STATE  
BOARD OF PSYCHOLOGICAL EXAMINERS,

Respondent.

**FILED**

SEP 10 2001

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Rehak*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying judicial review and affirming the Nevada Board of Psychological Examiners' revocation of appellant's license to practice clinical psychology. On appeal, appellant, Janet Guinn, argues that the district court erred in affirming the revocation of her license because her license was revoked without due process. We affirm the district court's judgment because Guinn failed to introduce any relevant evidence to support her due process claim.

Guinn contends that she was denied due process because she was denied a continuance, which left her unable to defend herself before the Nevada Board due to a confidentiality order entered four days before her hearing by an Alaska court. We disagree.

We review the decisions of professional discipline boards with deference.<sup>1</sup> The party challenging an agency's decision carries the burden of proving that the agency's decision is invalid.<sup>2</sup> However, this court may set aside an

<sup>1</sup>Minton v. Board of Medical Examiners, 110 Nev. 1060, 1079, 881 P.2d 1339, 1352 (1994).

<sup>2</sup>NRS 233B.135 (2).

agency's decision if the petitioner can establish that she was denied due process.<sup>3</sup>

NRS 641.230, as it existed at the time of Guinn's hearing, read in pertinent part:

The board may suspend the license of a psychologist, place a psychologist on probation, revoke the license of a psychologist, require remediation for a psychologist or take any other action specified by regulation if the board finds by a preponderance of the evidence that the psychologist has:

. . . .

8. Had his license to practice psychology suspended or revoked by another state.

Courts in jurisdictions with similar statutes have held that the underlying conduct that led to the suspension of a petitioner's license in another state is immaterial to an in-state revocation proceeding; the only relevant inquiry is whether the petitioner's license was revoked by another state.<sup>4</sup>

The refusal of an administrative agency to grant a continuance of an administrative hearing may only be overturned upon a clear showing of abuse of discretion.<sup>5</sup> Whether such a denial is so arbitrary as to violate procedural due process depends on the circumstances of the case, with emphasis upon the reasons presented to the administrative

<sup>3</sup>See NRS 233B.135(3).

<sup>4</sup>See, e.g., Matter of Cole 476 A.2d 836, 839 (N.J. Super. Ct. App. Div. 1984); McKay v. Board of Medical Examiners, 788 P.2d 476, 478 (Or. Ct. App. 1990); Tandon v. State Bd. of Medicine, 705 A.2d 1338, 1345 (Pa. Commw. Ct. 1997); Butts v. Wyoming State Bd. of Architects, 911 P.2d 1062, 1066 (Wyo. 1996).

<sup>5</sup>See Viglino v. Unemp. Comp. Bd. of Rev., 525 A.2d 450, 453 (Pa. Commw. Ct. 1987); cf. Zessman v. State, 94 Nev. 28, 31, 573 P.2d 1174, 1177 (1978) (citing Ungar v. Sarafite, 376 U.S. 575 (1964) (denial of a continuance by a trial judge is within the discretion of the trial court)).

agency at the time the request is made.<sup>6</sup> Due process rights are not violated when a board considers another state's revocation of a license as long as the board provides the licensee appropriate notice and a hearing.<sup>7</sup>

The Alaska Board of Psychologists and Psychological Associate Examiners revoked Guinn's license to practice psychology in that state on November 20, 1998. Ten days later, Guinn informed the Nevada Board about the Alaska Board's action by letter. On March 9, 1999, Guinn received notice that the Nevada Board intended to hold a hearing on her licensure status. On May 21, 1999, the Nevada Board then issued a formal complaint and notice of hearing. Guinn appeared at the scheduled hearing with her attorney on June 26, 1999. The record shows that Guinn did not request a continuance until the final decision of the Alaska Board was admitted into evidence over her objections. Specifically, Guinn objected that the Alaska Board's decision was not properly authenticated and contained confidential material.<sup>8</sup>

Only then did Guinn move for a continuance, arguing that she could not make a full and fair case before the Nevada Board until confidentiality issues surrounding her Alaska case could be resolved. The Nevada Board denied Guinn's motion for a continuance, explaining that its role was not to relitigate the dispute in Alaska but rather to determine whether Guinn's license had been revoked by another state. In addition, the Nevada Board noted that the Alaska Board's final decision was

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<sup>6</sup>See Zessman, 94 Nev. at 31, 573 P.2d at 1177 (citing Nilva v. United States, 352 U.S. 385 (1957) (denial of continuance by a trial court)).

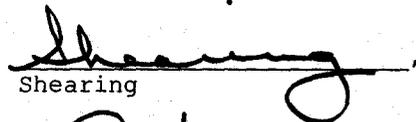
<sup>7</sup>Butts, 911 P.2d at 1066.

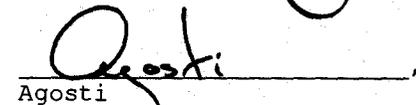
<sup>8</sup>Because both the Nevada Board and the district court rejected Guinn's authentication argument and she did not raise this issue on appeal, we do not address it here.

marked "public document" and noted where confidential material had been redacted. The Nevada Board then revoked Guinn's license, and the district court affirmed the Board's decision.

Because the record establishes that Guinn had her license to practice psychology revoked by another state, pursuant to NRS 641.230(8), the Nevada Board had sufficient grounds to revoke Guinn's license in Nevada. In addition, because Guinn was given a hearing and adequate notice, and no relevant information was precluded from being presented at that hearing, we conclude that Guinn's due process rights were not violated by the Nevada Board. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
Shearing J.

  
Agosti J.

  
Rose J.

cc: Hon. Steven P. Elliott, District Judge  
Attorney General  
Jeffrey A. Dickerson  
Washoe County Clerk