

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IN THE MATTER OF THE
APPLICATION OF XINPU YAN,
Appellant,
vs.
NEVADA STATE BOARD OF
MASSAGE THERAPY,
Respondent.

No. 81233-COA

FILED

MAY 27 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Xinpu Yan appeals from a district court order denying his petition for judicial review. Eighth Judicial District Court, Clark County; Trevor L. Atkin, Judge.

Yan applied to the Nevada State Board of Massage Therapy (Board) for a massage license.¹ The Board sent Yan a letter notifying him that the Board was going to consider his character and alleged misconduct at a public meeting. The letter stated the time and place of the meeting and said Yan could bring counsel and present evidence on his own behalf. The letter also stated it acted as notice and that it was provided under NRS 241.033.² Yan attended the meeting with his counsel. The Board held an open hearing regarding Yan's application at Yan's request and because the Board discussed alleged misconduct. After the hearing, the Board denied Yan's application. Yan then petitioned the district court for judicial review and the Board opposed.

¹We do not recount the facts except as necessary to our disposition.

²The Board's notice given pursuant to NRS 241.033 was necessary to comply with Nevada's open meeting laws.

The district court denied Yan's petition for judicial review for two reasons. First, it found that pursuant to *Private Investigator's Licensing Bd. v. Atherley*, 98 Nev. 514, 654 P.2d 1019 (1982), that denial of an occupational license is not a contested case which would otherwise require a hearing. Second, it found that because "Yan's attendance at the meeting to determine whether to issue him an occupational license was not 'required by law,' [it was] not a 'contested case.'" See NRS 233B.127 (an agency's determination to grant, deny, or review a license is not a "contested case" unless notice and opportunity for a hearing are *required by law*). It therefore dismissed the petition as unreviewable without addressing its merits.

On appeal, Yan argues that the district court erred because he and his counsel participated in a contested hearing, and therefore, even though the Board had discretion in deciding whether to issue him a license, he should still be entitled to judicial review of the Board's decision.³ We disagree.


We review this matter de novo because it involves statutory interpretation. *UMC Physicians' Bargaining Unit of Nev. Serv. Emps. Union v. Nev. Serv. Emps. Union/SEIU Local 1107, AFL-CIO*, 124 Nev. 84, 88, 178 P.3d 709, 712 (2008). The Administrative Procedures Act (APA) governs this matter because the proceeding involved a petition for judicial review of an administrative decision. *Washoe Cty. v. Otto*, 128 Nev. 424, 430, 282 P.3d 719, 724 (2012). However, not every administrative decision is reviewable. *Atherley*, 98 Nev. at 515, 654 P.2d at 1019. Only decisions


³Yan also asserts on appeal that we should address the merits of the Board's denial of his license, however, as we find the district court properly denied Yan's request for judicial review, we will not address this claim.


that are in "strict compliance with the statutory requirements" are reviewable by the district court. *Kame v. Emp't Sec. Dep't*, 105 Nev. 22, 25, 769 P.2d 66, 68 (1989). The statutory requirements governing the Board's proceedings involving Yan are contained in NRS Chapter 640C.

NRS 640C.580 sets forth the requirements to obtain a license as a massage therapist in Nevada, but does not specifically provide that notice and an opportunity for a hearing are required before approving or denying a license. Additionally, NRS 622A.020(2) provides that "[a] final decision of a regulatory body approving or denying an application for issuance or renewal of a license is not a contested case for the purposes of this chapter." While we recognize that NRS 640C.710 could be interpreted as requiring notice and an opportunity for a hearing before the Board can deny the issuance of a license in a disciplinary action, NRS 622A.130(2) provides that if there are conflicts with the statutory provisions governing occupational licensing pursuant to NRS Chapter 640C and those of NRS Chapter 622A, NRS Chapter 622A controls. Therefore, the provisions of NRS 622A.020(2) govern, and the Board's final decision denying Yan's application for a license, following a hearing Yan and his counsel were invited to, but not required to attend, does not rise to the level of a contested case. Thus, Yan is not entitled to judicial review. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Tao


_____, C.J.
Gibbons


_____, J.
Bulla

cc: Hon. Linda Marie Bell, Chief Judge, Eighth Judicial District Court
Court
Department 7, Eighth Judicial District
Kirk T. Kennedy
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Attorney General/Las Vegas
Eighth District Court Clerk