Administrative Case Law Update

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I. Introduction

This case law update includes many of the administrative law cases decided in Texas between May 2018 and May 2019. This is not an exhaustive review of all administrative law cases, nor do these synopses exhaustively cover all issues raised by these cases. We have attempted to choose cases representative of issues raised in Texas courts and to highlight the most salient points of each. Our views are not to be taken as the views of Texas Tech University School of Law and should not be interpreted as predictive of the result of future cases.

II. Agency Authority

Banda v. Tex. Bd. of Nursing, NO. 13-16-0036, 2018 WL 2371641, 2018 Tex. App. LEXIS 3698 (Tex. App.—Corpus Christi May-Edinburg May 24, 2018, no pet.). μ

This case centers on the interactions between the Texas Board of Nursing (Nursing Board), an administrative judge, and a nurse who faced sanctions due to an inappropriate relationship with a patient. The primary conduct took place up to May of 2013. After the conduct was brought to the Nursing Board's attention, further inappropriate conduct allegedly took place after the patient was removed from Banda's care.

An administrative law judge heard the case and reasoned that Banda did not violate nursing regulations because the relationship ended at the time of the discovery of the initial allegations. Because of this finding, the judge reasoned that because Banda did not violate the nursing rules, she should not face any suspension of her license from the allegations. The judge also offered an opinion that if the board found the alleged conduct did not end at the time the primary allegations were brought to the attention of the board, Banda's license should face revocation.

In 2015 the Texas Nursing Board reviewed all of Banda's allegations and concluded the judge did not properly apply the Nursing Board's protocol and regulations concerning relationships with patients. The Nursing Board independently determined that the judge did not properly apply the statutes governing nurse-patient relationships and that grounds existed for reviewal of the previous decision. The board remanded the case back to the administrative law judge

with a finding from the board that the nurse-patient relationship continued and amended finding of facts.

Upon receipt of this, the judge amended the judgment and amended its own finding of facts to reflect the boards' findings. The judge also allowed the Nursing Board to attach its own amended conclusions that Banda violated the nurse-patient relationship parameters and that the judge should suspend Banda's nursing license in Texas for two years. The judge further inserted a finding that the board should ultimately determine what conduct does and does not violate its own law. Banda filed a plea to the jurisdiction and six other issues to the district court concerning the conduct of the Nursing Board and the judge. The district court ruled for the Nursing Board. The issue before the appellate court focused on the first issue, which asked if the Texas Nursing Board possessed the authority to remand a decision of the administrative law judge back for further consideration.

The appellate court focused on the question of whether the Nursing Board's decision to remand the case back to the judge for further consideration, the Nursing Board fulfilled its authority under its governing statutes or if the Nursing Board superseded its power and created new power for itself. Ultimately, the court found that the Board's action of remanding the case back to the judge essentially created a new power for itself and thus violated its power. The court stated the code did not allow the Nursing Board to remand a proposal to an administrative judge and provide a new proposal based on the Nursing Board's choice, and the court lacked any case precedent that justifies the Nursing Board's action. The court found that because the Nursing Board essentially told the judge to create a new proposal considering the Board's own findings, that it violated its authority.

The Nursing Board did possess the power to vacate or modify the decision, but it lacked the power under the law to remand the decision. The court remanded the case back to the Board and instructed it to review the case considering the court's findings. *Banda* stands for the proposition that when a state administrative agency may not violate statutory authority as it seeks to pursue its purpose. Even if the board does possess the power to achieve an objective in substance, it may not overreach procedurally in pursuit of that goal.

III. Agency Interpretation of Statutes and Rules

Tex. Workforce Comm'n v. Wichita Cnty., 548 S.W.3d 489 (Tex. 2018). Σ

Julia White worked for Wichita County (County). In August 2011 she went on unpaid leave under the Family Medical Leave Act (FMLA) for medical reasons. In September she informed the County that she received medical restrictions that required accommodations. In November, such a position became available and White returned to work. However, prior to her return, White filed a claim for unemployment benefits with the Texas Workforce Commission (Commission) on October 2nd. The County contested White's claim on grounds that she remained an employee of the County and, therefore, did not qualify. On October 25th, the Commission stated White was "unemployed" while on an unpaid leave of absence for a medically verifiable illness, and that she could be paid unemployment benefits *if* she met additional requirements.

The County appealed on grounds that White did not voluntarily leave work, was not fired, was not laid off, and never quit, but the Commission Appeal Tribunal affirmed. The County then filed for judicial review, wherein the trial county reversed the Commission's decision that White qualified for benefits.

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