In re Dailey

309 N.C. 710 (1983) | Cited 15 times | Supreme Court of North Carolina | December 6, 1983

The primary issue on this appeal is whether the Court of Appeals erred in applying the standard of G.S. § 90-21.12, relating to civil liability for medical malpractice, to a professional licensing board disciplinary hearing. We hold that it did.

This appeal is from an administrative hearing held pursuant to the Dental Practice Act, N.C.G.S. Chapter 90, Article 2, and the Administrative Procedure Act, N.C.G.S. Chapter 150A, Article 3, to determine whether respondent should be disciplined for alleged violations of the Dental Practice Act. G.S. § 90-21.12, on the other hand, provides that:

§ 90-21.12. Standard of health care.

In any action for damages for personal injury or death arising out of the furnishing or the failure to furnish professional services in the performance of medical, dental, or other health care, the defendant shall not be liable for the payment of damages unless the trier of the facts is satisfied by the greater weight of the evidence that the care of such health care provider was not in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities at the time of the alleged act giving rise to the cause of action.

G.S. § 90-21.12 thus establishes a standard of care below which a health care provider may be held civilly liable in damages. Clearly, G.S. § 90-41 and G.S. § 90-21.12 serve different purposes. Admittedly the violations for which a dentist may be subject to discipline include acts of "malpractice," G.S. § 90-41(a)(19). We do not believe, however, that this language was intended to incorporate a standard applicable in actions for damages "for personal injury or death arising out of the furnishing or the failure to furnish professional services in the performance of . . . dental . . . care." G.S. § 90-21.12. In fact, G.S. § 90-41 was first enacted in 1935, long before the 1975 enactment of G.S. § 90-21.12. Therefore, the standard of health care enunciated under G.S. § 90-21.12 is inapplicable.

The Dental Practice Act is silent as to the standard of practice by which a dentist's negligence or incompetence is to be

measured. In considering the regulatory, licensing and disciplinary functions of the North Carolina State Board of Dental Examiners, we hold that a statewide standard must be applied. That is, prior to invoking disciplinary measures as authorized under G.S. § 90-41(a), the Board must first be satisfied

that the care provided by the licensee was not in accordance with the standards of practice among members of the dentistry profession situated throughout the State of North Carolina at the time of the alleged violation.

The North Carolina State Board of Dental Examiners, like all other professional licensing boards, was created to establish and enforce a uniform statewide minimum level of competency among its licensees. Applicants are required to meet a minimum statewide standard prior to being granted a license, G.S. § 90-30; and licensees are required, irrespective of location in the State, to comply with the rules and regulations promulgated by the Board. Likewise we believe that the decision of whether an applicant or licensee has violated any of the factors enumerated in G.S. § 90-41 authorizing disciplinary action must also be viewed in the context of a uniform statewide standard.[1] In this respect Judge Smith was correct in remanding the case for findings and conclusions based on a statewide standard of practice.

We do not agree with the Board, however, that it was authorized to enter its Final Agency Decision Upon Remand without the benefit of additional expert testimony that the care provided by the respondent was not in accordance with the standards of practice among members of the dentistry profession situated throughout the State at the time of the alleged violations.

The Board argues that because it is an administrative agency "composed of experts," it may make its own judgment of the evidence and reject even uncontradicted expert testimony. Utilities Page 724} Commission v. Duke Power Co., 305 N.C. 1, 287 S.E.2d 786 (1982). Thus, reasons the Board, as a professional licensing body it is authorized to substitute its own expertise for that of expert witnesses, and is therefore authorized to make an independent determination of the standards of practice required for continued licensure without the benefit of expert testimony.

We first point out that Utilities Commission v. Duke Power Co., 305 N.C. 1, 287 S.E.2d 786, was a utility rate case. G.S. § 150A, the Administrative Procedure Act, specifically exempts the Utilities Commission from its coverage. G.S. § 150A-1. The cornerstone of the Administrative Procedure Act is a requirement that there be preserved a record for judicial review. Implicit in this requirement is the necessity for reasoned evaluation and analysis of evidence presented before the agency upon which its determination must be based. As stated in Arthurs v. Board of Registration, 383 Mass. 299, , 418 N.E. 2d 1236, 1244 (1981),

'This startling theory [that the Board could use its own expertise without the evidentiary basis of that expertise appearing in the record], if recognized, would not only render absolute a finding opposed to uncontradicted testimony but would render the right of appeal completely inefficacious as well. A board of experts, sitting in a quasi-judicial capacity, cannot be silent witnesses as well as judges.' The board may put its expertise to use in evaluating the complexities of technical evidence. However, the board may not use its expertise as a substitute for evidence in the record.

(Citations omitted.) Accord, Wood v. Texas State Bd. of Medical Examiners, 615 S.W. 2d 942 (Tex. 1981); Dotson v. Tex. State Bd. of Medical Exam., 612 S.W. 2d 921 (Tex. 1981); Franz v. Board of Medical Quality Assur., 31 Cal. 3d 124, 181 Cal. Rptr. 732, 642 P. 2d 792 (1982); Farney v. Anderson, 14 Ill. Dec. 346, 56 Ill. App. 3d 677, 372 N.E. 2d 151 (1978).

Thus, while it is true that "'[t]he determination whether by common judgment certain conduct is disqualifying is left to the sound discretion of the board.'" In re Hawkins, 17 N.C. App. 378, 395, 194 S.E.2d 540, 551, cert. denied, 283 N.C. 393, 196 S.E.2d 275, cert. denied, 414 U.S. 1001 (1973), the record must include an indication of the basis upon which the board or other agency exercised its expert discretion. On this issue, the following observation

by the Supreme Court of the United States is applicable and bears repeating.

We are not prepared to and the Administrative Procedure Act will not permit us to accept such adjudicatory practice [no findings and no analysis to justify the choice made, no indication of the basis on which the Commission exercised its expert discretion]. Expert discretion is the lifeblood of the administrative process, but 'unless we make the requirements for administrative action strict and demanding, expertise, the strength of modern government, can become a monster which rules with no practical limits on its discretion.' 'Congress did not purport to transfer its legislative power to the unbounded discretion of the regulatory body.'

Burlington Truck Lines v. United States, 371 U.S. 156, 167, 9 L. Ed. 2d 207, 215 (1962) (citations omitted).

Having reviewed the testimony of record, we agree with Judge Smith and find substantial, competent evidence to support those findings of fact and conclusions of law as set out and affirmed in Judge Smith's Judgment of 20 February 1981. We reverse the decision of the Court of Appeals and remand the case to that court for further remand to the North Carolina State Board of Dental Examiners for the purpose of taking additional testimony respecting the statewide standard of practice and whether the care provided by the respondent was in accordance with that standard.

Reversed and remanded.

Disposition

Reversed and remanded.

1. We note that language similar to that in G.S. § 90-41(a)(12), (14) and (19) appears in numerous other health profession licensing statutes: see G.S. § 90-14(a)(11) (Supp. 1983) (Practice of Medicine); G.S. § 90-121.2(a)(12), (14) and (19) (Supp. 1983) (Optometry); G.S. § 90-136(3) (Osteopathy); G.S. § 90-154(5), (6) (Supp. 1983) (Chiropractic Medicine); G.S. § 90-171.37(5) (Supp. 1983) (Nursing Practice); G.S. § 90-202.8(a)(12), (13) (Supp. 1983) (Podiatrists); G.S. § 90-229(a)(5), (10) (Dental

Hygiene); G.S. § 90-270.36(7) (Physical Therapy); G.S. § 90-270.60(a)(4) (Marital and Family Therapy).