

*** NOT FOR PUBLICATION ***

NO. 24367

IN THE SUPREME COURT OF THE STATE OF HAWAII

JOHN DOE, Respondent-Appellant

vs.

BOARD OF MEDICAL EXAMINERS, Petitioner-Appellee

NORMA T. YARA
CLERK APPELLATE COURTS
STATE OF HAWAII

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FILED

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 99-1188)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Respondent-appellant [hereinafter "Appellant"] appeals from the first circuit court's June 15, 2000 judgment¹ affirming the Board of Medical Examiners' [hereinafter "Board"] December 11, 1998 order revoking Appellant's license to practice

medicine. On appeal, Appellant argues that the circuit court erred by affirming the Board's decision inasmuch as: (1) the Board erred by reversing the hearings officer's recommended order and by rejecting the hearings officer's findings of fact and fact-based conclusions of law; (2) the Board's findings of fact were clearly erroneous and unsupported by reliable, probative, and substantial evidence in the record; (3) the Board erred by overruling the hearings officer's decision to exclude tapes and transcripts of tapes of a telephone conversation between the first complaining witness and Appellant; (4) the hearings officer

¹ The Honorable Eden Elizabeth Hifo presided.

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erred by denying Appellant's motion to dismiss count two based on the doctrine of laches; (5) the hearings officer erred by permitting the second and third complaining witnesses to testify by telephone; (6) the Board erred by reversing the hearings officer's recommended order and by rejecting his findings of fact and fact-based conclusions of law in count three based upon the third complaining witness' allegations; (7) the Board erred by applying a preponderance of the evidence standard as the quantum of proof by which the Regulated Industries Complaints Office had to prove the allegations in a medical license revocation proceeding; (8) the Board erred by failing to provide Appellant with a copy of its proposed final decision and order, thus depriving Appellant of the opportunity to file exceptions and to request argument; (9) the Board's decision was procedurally defective inasmuch as three of the Board's members had not heard the hearings officer's summary of the evidence and counsel's arguments before the Board, and the record indicates that two of those three members may not have listened to the tapes of the hearing or read the record; (10) the Board was not impartial; (11) the Board erred by failing to make its decision within a reasonable time; and (12) the court did not permit Appellant to question members of the Board in order to establish that a majority had not listened to the tapes of the hearing and read

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the entire record prior to approving the Board's decision.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised, we hold that the Board erred by failing to provide Appellant with a copy of its proposed final decision and order. See Hawai'i Revised Statutes § 91-11 (1993);² Application of Oahu Terminal Serv., Inc., 52 Haw. 221, 224, 473 P.2d 573, 574 (1970) ("The Hawaii act makes the presentation of a proposal for decision mandatory, where the agency officials have not heard and examined all of the evidence.") (emphasis in original); Application of Terminal Transp., Inc., 54 Haw. 134, 139, 504 P.2d 1214, 1217 (1972) ("A fundamental reason for the enactment of the Hawaii Administrative Procedure Act was to insure fairness and impartiality in administrative proceedings. Fairness and impartiality cannot be insured when an administrative agency such as the Public

² Hawai'i Revised Statutes § 91-11 states, in its entirety, the following:

§91-11 Examination of evidence by agency. Whenever in a contested case the officials of the agency who are to render the final decision have not heard and examined all of the evidence, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision containing a statement of reasons and including determination of each issue of fact or law necessary to the proposed decision has been served upon the parties, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the officials who are to render the decision, who shall personally consider the whole record or such portions thereof as may be cited by the parties.

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Utilities Commission consistently refuses to abide the clear mandates of the statute.").

Inasmuch as the foregoing issue is dispositive, we do not reach the merits of Appellant's remaining eleven points of error. Therefore,

IT IS HEREBY ORDERED that the judgment from which the appeal is taken is vacated and the case remanded for further proceedings consistent with HRS § 91-11.

DATED: Honolulu, Hawai'i, April 12, 2006.

On the briefs:

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John Doe

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