

Opinion No. 95-01

February 24, 1995

OPINION OF: Tom Udall, Attorney General

BY: Allen Ferguson, Jr., Assistant Attorney General

TO: Richard W. Thompson, Executive Director, New Mexico board Of Pharmacy, 1650 University Boulevard, NE Albuquerque, New Mexico 87102

QUESTIONS

Does the language in Section 3(L) of the Uniform Licensing Act ("ULA") (NMSA 1978, Sec. 61-1-3(L), Repl. Pamp. 1993), by itself, grant the Board of Pharmacy sufficient legal authority to assess fines:

- (1) against pharmacists for violations of the Pharmacy Act and the Board's regulations?
- (2) against other (i.e. non-pharmacist) licensees or registrants of the Board of Pharmacy for violations of any of the statutes enforced by the Board?

CONCLUSIONS

1. Yes. Sections 3(L) of the ULA grants the Board of Pharmacy authority to fine pharmacist licensees up to \$1000.00 for any violation of the Pharmacy Act or for a violation of provisions of the Board's rules and regulations for which the Pharmacy Act authorizes disciplinary action.

2. Yes, with the limitation explained below. Section 3(L) of the ULA also grants the Board of Pharmacy authority to impose fines of the same amounts upon non-pharmacist registrants and licensees over whom the Board has the power to impose other forms of discipline including license or registration revocation and suspension. As to persons over whom the Board lacks such disciplinary powers under the Pharmacy Act, the ULA does not grant the power to impose fines.

THE STATUTORY SCHEME

Chapter 61 of the New Mexico statutes, governing professional and occupational licensing, contains both the ULA, NMSA 1978, Sections 61-1-1 to -33, and approximately thirty-five statutes relating to the regulation of particular professions and occupations ("practice acts"). One of those practice acts is the Pharmacy Act, NMSA 1978, Sections 61-11-1 to -29.

1. The Uniform Licensing Act

The ULA is a kind of "umbrella" statute which sets forth procedures and powers governing licensing and disciplinary activities of all licensing boards, including the Board of Pharmacy, whose practice acts appear in Chapter 61.¹ As to procedural requirements, for example, the ULA states that any covered licensing board which proposes to take disciplinary action against a licensee must first provide the licensee with a written notice setting forth, among other things, the type of action that the board contemplates taking, the general nature of the evidence against the licensee, and what the licensee must do to obtain a hearing. Sec. 61-1-4(D). As to powers conferred upon licensing boards, the ULA empowers the licensing boards, for example, to issue pre-complaint investigative subpoenas (Sec. 61-1-4(A) and to designate hearing officers to conduct disciplinary hearings (Sec. 61-1-7).

Section 61-1-3 of the ULA requires a board such as the Board of Pharmacy to give a licensee notice and the opportunity for a hearing "before the board has authority to take any action which would result in" various forms of disciplinary action such as license suspension or revocation. Sec. 61-1-3 made no reference to types of disciplinary action against licensees other than suspension and revocation of their licenses.²

In 1993, the legislature amended ULA Section 3 to add eight other types of disciplinary action as to which a licensing board must provide notice and the opportunity for a hearing "before the board has authority to take action which would result in" the imposition of such measures. Sec. 61-1-3(G) - (N). The types of disciplinary action added by the 1993 amendments are:

- (G) restrictions or limitations on the scope of a practice;
- (H) the requirement that the applicant complete a program of remedial education or treatment;
- (I) monitoring of the practice by a supervisor approved by the board;
- (J) the censure or reprimand of the licensee or applicant;
- (K) compliance with conditions of probation or suspension for a specific period of time;
- (L) payment of a fine not to exceed one thousand dollars (1,000) for each violation, unless a greater amount is provided by law;
- (M) corrective action, as specified by the board;
- (N) a refund to the consumer of fees that were billed to and collected from the consumer by the licensee.

Section 61-1-3 of the ULA also was changed by the 1993 amendments to add to the causes for which license renewal may be withheld without the need to provide notice and hearing "issuance of a temporary license extension if authorized by statute." Sec.

61-1-3(D). Other changes to the ULA made by the 1993 amendments include a provision that "[f]or the purpose of investigating complaints against licensees, the board may issue investigative subpoenas;; and a requirement that "[l]icensees shall bear all costs of disciplinary proceedings unless they are excused by the board from paying all or part of the fees, or if they prevail at the hearing and an action specified in Section 61-1-3 . . . is not taken by the board." Sec. 61-1-4(A), (G) (Repl. Pamp. 1993).

2. The Pharmacy Act

The Pharmacy Act, among other things, establishes the Board of Pharmacy (Section 61-11-4); grants licensing and other powers to the Board (Section 61-11-6); sets forth requirements for licensure ("registration") as a pharmacist (Section 61-11-9, -10); and sets forth grounds for taking disciplinary actions against a licensee (Section 61-11-20).

Regarding disciplinary action, the Pharmacy Act provides, in pertinent part, that "in accordant with the Uniform Licensing Act, the board may . . . suspend or revoke any certificate of registration or license . . . under the Pharmacy Act" for any of several enumerated causes including but not limited to "unprofessional conduct as defined by regulation of the board" and drug addiction. Sec. 61-11-20(A). The Pharmacy Act also authorizes the Board to issue a "written notice or warning." Sec. 61-11-20(D). It makes no specific mention, however, of the power of the Board to take the particular actions set forth in Sections 61-1-3(G) through (N) of the ULA, including the assessment of a fine. The Pharmacy Act also makes no mention of any Board power to issue investigative subpoenas or to tax costs of a disciplinary hearing to the licensee as provided in Section 61-1-4(A) and (G), respectively, of the ULA.

The Pharmacy Act expressly provides that disciplinary proceedings of the Board "shall conform with the provisions of the Uniform Licensing Act" (Sec. 61-11-20(B) and that the Board "shall be subject to all the provisions of the Uniform Licensing Act."

ANALYSIS

The first question presented is whether Section 61-1-3 of the ULA, as amended in 1993, grants the Pharmacy Board the power to impose fines against its licensees, in particular, pharmacists. The answer to that question depends upon whether the Legislature, in amending Section 3, intended to confer such authority. We believe it did.

The purpose of rules of Statutory construction is to assist in the determination of legislative intent. **Quintana v. Taxation & Revenue Dep't.** 100 N.M. 224, 226, 668 P.2d 1101, 1103 (1983). In interpreting a statutory scheme, the entire statute (or related set of statutes) should be read "as a whole and giving effect to all of its provisions." **AA Oilfield Service, Inc. v. New Mexico State Corporation Commission**, 118 N.M. 273, 881 P.2d 18, 22 (1994). Further, statutes should not be interpreted in such a way as to render any of their provisions meaningless or absurd. **State v. Gutierrez**, 115 N.M. 551, 854 P.2d 878, **cert. denied**, 115 N.M. 545, 854 P.2d 872 (1993).

Although an administrative agency possesses only such powers as are delegated to it by statute, its "authority . . . ' is not limited to those powers expressly granted by statute, but includes, also, all powers that may fairly be implied therefrom.' " **AA Oilfield Service**, 118 N.M. 273, 881 P.2d at 22, **quoting Winston v. New Mexico State Police Bd.**, 80 N.M. 310, 311, 454 P.2d 967, 968 (1969). Further, an administrative agency has authority to reasonably resolve ambiguities in statutes it interprets and applies. **State ex rel. Helman v. Gallegos** 117 N.M. 346, 871 P.2d 1352 (1994).

Applying the above principles of statutory construction and agency authority to the issues at hand, it is clear, first, that Chapter 61 of the New Mexico statutes, comprising the ULA and the individual practice acts, including the Pharmacy Act, must be read "as a whole . . . giving effect to all of [their] provisions." **AA Oilfield Service, Inc.**, 881 P.2d at 22. This is because the ULA and the practice acts, together, form an unified statutory scheme for the governance of professional and occupational licensure and discipline in New Mexico. The unified and integrated nature of this statutory scheme is shown, for example, by the fact that the ULA expressly provides that its terms govern the various boards, including the Pharmacy Board, that have been created to enforce the various practice acts. The integrated nature of the statutory various practice acts. The integrated nature of the statutory scheme is also demonstrated by the Pharmacy Act's provision that the Pharmacy Board is subject to "all the provisions" of the ULA. Sec. 61-11-28.

Reading the ULA and the Pharmacy Act together as parts of a unified statutory scheme, so as to give effect to all provisions of both that apply to the issue at hand, it appears that the disciplinary powers referred to in Section 3 (G) through (N) of the ULA (including the power to fine) would have no meaning or effect with respect to the Pharmacy Board if the ULA were not read as conferring power upon the Board to impose these forms of discipline. The same reasoning applies with respect to the powers of all other licensing boards covered by the ULA, for none of the individual practice acts expressly confers on a board all of the powers referred to in Section 3(G) through (N) of the ULA.³ Moreover, at least one of the powers referred to in Section 3(G) through (N) is not found in any of the practice acts.⁴ Because it is presumed that the Legislature does not enact statutory provisions that have no meaning or effect, the conclusion follows that the 1993 Legislature granted to each licensing board those powers listed in ULA Sections 3(G) through (N) which it did not already possess.

Four additional arguments bolster this conclusion about the Legislature's intent. First, Section 61-1-3(L)'s reference to a board's authority to require the "payment of a fine for a violation not to exceed one thousand dollars (\$1000) for each violation, **unless a greater amount is provided by law** " (emphasis added) indicates that the Legislature intended to grant the power to impose fines of up to \$1000 to boards that did not already possess it. If the Legislature had not intended to confer a power to fine upon boards that did not already possess such power, it would simply have stated that notice and a hearing are required before a board may impose "any" fine.

Second, one of the other changes to ULA Section 61-1-3 effected by the 1993 amendments demonstrates that where the Legislature intended to make a power contingent upon the existence of independent statutory authority, it expressly said so. Section 61-1-3(D) of the ULA was changed by the 1993 amendments to include among the permissible grounds for denying license renewal without a hearing the "issuance of a temporary license extension **if authorized by statute.**" (Emphasis added). By contrast, the forms of discipline referred to in Section 3(G; through (N) (including the imposition of fines) do not tie their effectiveness to the existence of independent statutory authority.

Third, subsections (A) and (G) of Sections 61-1-4 of the ULA, both of which were added by the 1993 amendments, appear to confer on all licensing boards entirely new powers that did not previously exist at all. As previously noted, Subsection (A) affirmatively states that a board "may issue investigative subpoenas prior to the issuance of a notice of contemplated action." Subsection (G) requires the payment of the costs of disciplinary proceedings by licensees (with states exceptions) and by necessary implication grants the boards the power to assess such costs.

Finally, in granting to boards the powers set forth in section 61-1-3(G) through (N), the Legislature chose the most efficient and practical method of doing so. It is obvious that amending a single statute (the ULA) is far more effective than amending more than thirty individual practice acts.

For all the reasons just discussed, we reject the overly simplistic argument that the ULA is merely a procedural act and conclude that the ULA confers some new powers on boards covered by it. Therefore, we also reject the argument that the ULA's power to fine merely sets forth the procedural requirements for those boards whose practice acts already confer that power.

Turning to the second question posed above (whether Section 61-1-3 of the ULA grants the Board of Pharmacy the power to impose fines on licensees or registrants of the Board other than pharmacists), it appears that the ULA grants such powers with respect to non-pharmacist licensees and registrants whose licenses or registrations the Board has the power under the Pharmacy Act to suspend or revoke. Among these, for example, are pharmacies, see Sections 61-11-14 and 61-11-20 of the Pharmacy Act, which are subject to both licensure and disciplinary measure under the Pharmacy Act. Accordingly, since Section 61-1-3(L) of the ULA adds to the Board's disciplinary power to fine licensed pharmacists, Section 61-1-3(L) has the same effect with respect to the Board's Section 61-1-3(L) has the same effect with respect to the Board's authority to fine other licensees under the Pharmacy Act. As to persons over whom the Board lacks such disciplinary powers under the Pharmacy Act, the ULA does not grant the power to impose fines.

ATTORNEY GENERAL

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GENERAL FOOTNOTES

[n1](#) See Sec. 61-1-2(A) (3), defining the term "board" as used in the ULA to include any "board, commission or agency the administers a profession or occupation licensed pursuant to Chapter 61 NMSA 1978." The ULA also applies to certain other state agencies, including the Construction Industries Commission and the Manufactured Housing Committee. Sec. 61-1-2(A) (1) and (2).

[n2](#) Both before and after the 1993 amendments, section 61-1-3 of the ULA also has required notice and the opportunity for a hearing before a licensing board has the power to take various other types of action, namely, in limited circumstances, denial of permission to take an examination; denial of license after examination; denial of a license on the basis of reciprocity; and withholding renewal of a license. These actions, which relate primarily to license applicants rather than to current licensees, are not among the actions referred to in this Opinion as "disciplinary actions."

[n3](#) A few of the practice acts expressly confer a power to fine. See, for example, the Medical Practice Act, NMSA 1978, Section 61-6-8. However, the Medical Practice Act does not expressly confer all of the other powers set forth in Section 61-1-3(G) through (N) of the ULA.

[n4](#) Specifically , the power of a licensing board to require a refund to the consumer of fees billed to and collected from the consumer by the licensee, referred to in Section 61-3-3(N) of the ULa, does not appear expressly in any of the practice acts.

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