

FILED

04/08/2024

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 23-0512

IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme court No. DA 23-0512

RICHARD E. SHREVES

Plaintiff and Appellant,

v.

MONTANA DEPT. OF LABOR AND INDUSTRY

CORRECTIONAL HEALTHCARE REVIEW

PANEL, MONTANA DEPARTMENT OF

CORRECTIONS and PAUL REES,

Respondents and Appellees.

FILED

APR - 8 2024

Bowen Greenwood
Clerk of Supreme Court
State of Montana

APPELLANT'S OPENING BRIEF

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STATEMENT OF THE ISSUES

Did the District Court abuse its discretion when refusing to timely file Shreves's petition for review and when it ignored Shreves's timely filed Response to the Motion to Dismiss (R.O.A. 26)?

Was Shreves an aggrieved party with standing to bring the Petition for Judicial Review of the Correctional Health Care Review Team (CHCR) (MCA 37-1-331) decision to dismiss Shreves's complaint against Dr. Paul Rees?

Is the CHCR an unconstitutional Delegation of authority by the Montana Legislature (MCA 37-1-331)?

Did the CHCR abuse its discretion when it refused to forward Shreves's complaint for an investigation and further proceedings by the medical examiner's board?

STATEMENT OF THE CASE

On April 3, 2023, Shreves deposited his Petition for Judicial Review in Montana State Prison (MSP) mail (Registrar of Actions "ROA" #1 at pg. 7 Certificate of Service). The petition arrived at the Lewis and Clark County Courthouse on 4-6-23 at 8:33 AM (Track USPS 91719690009350012131881). Only after Shreves's father called, and then visited, the Clerk of Court was the Petition filed by the staff on 4-27-23 (ROA #1). The mailing was located on "Susan's Desk" in a box (ROA 9 Declaration of Shreves at ¶10-11).

Next, Shreves's Motion to Substitute the Judge was never filed, nor was his documents in support of waiving the filing fee, so Shreves sought Supervisory Control in the Montana Supreme Court (OP 23-0293). Then, the Clerk again failed to file Shreves's combined Response to Respondents' Motions to Dismiss (ROA #4 & 6 MTD) until 7-28-2023 (ROA 26). Shreves's Certificate of Service notes it was mailed on July 11 (Pg. 14) and Defendant's REPLY was actually filed before Shreves's RESPONSE was even entered into the ROA (ROA 22).

The ORDER granting the Motions was also entered before Shreves's RESPONSE. That ORDER is appealed here (ROA 25).

The Petition itself demonstrated Dr. REes lied in Shreves's medical records and ignored diagnosed medical conditions, which delayed care for Shreves and these actions were taken out of malice and animosity against Shreves for previous complaints. Shreves also alleged that the CHCR abused its discretion when it ignored Shreves's factual allegations and refused to forward the complaint without providing any findings of fact or conclusions of law.

Shreves asked the District Court to send the Petition back to the CHCR to develop the record as to why they denied the complaint and failed to forward it to the board.

STATEMENT OF THE FACTS

1). Shreves submitted his complaint to the DEpartment of Labor on 10-3-22 alleging that Dr. Rees disregarded Shreves's complaints of pain; Delibaretly ignored ultrasound results in Shreves's record to deny Shreves treatment; misrepresented those findings in the special need treatment plan; repeatedly recorded in Shreves's medical records that Shreves refused medical treatment when Shreves was not refusing medical care; delayed Shreves sleep study for 3+ years resulting in Shreves suffering from untreated sleep apnea and resulting health sideeffects of such delay; Delayed Shreves an MRI for severe nerve and back pain and continued this delay for over a year; retaliated on Shreves for complaints by denying ordered tests ; refused to timely allow Shreves inspection and copying of his medical records per 45 CFR 162.524 et. seq. (ROA Doc. #1 at Exh. 1).

2). Shreves sent a copy of the MRI report to add it to the complaint on 12-22-22 and "am specifically asking here that you

provide findings of fact and conclusions of law" (ROA 1 at Exh #4).

3). The Notice of closure for the complaint was the only document that Shreves received explaining the decision of the Department (ROA 1 at Exh. #5).

4). The notice of closure was addressed to "Mr. BAuer" in the body of the notice (Id.).

5). On 4-3-2023 Shreves mailed the Petition for Judicial Review (ROA Doc 9 at ¶9).

6). At Shreves's request, his father followed up with the courthouse to determine if it arrived since Shreves never received any indication of the cause number and opening of the case (Id. at ¶10-11).

7). When he arrived at the courthouse on 4-27-23, Shreves's father had the certified mailing receipt indicating the mail had been delivered on 4-6-23 at 8:33 AM (Id. at ¶11).

8) The unfiled document was located on "Susan's desk" (Marcinck's) with the envelope indicating it was delivered on the 6th of April, 3 days after mailing (Id. ¶10).

9). The Petition was filed that day when Shreves's dad visited the courthouse (Id. at ¶11).

10). Respondents filed motion to dismiss on 5/23/2023 (ROA 6) and 6/1/2023 (ROA 13).

11). The court ruled on those motions on 7-28-2023 (ROA 25).

12). Mr. Shreves's Response to the Motions to Dismiss's CERTificate of Service states he mailed it on 7-11-2023 (ROA 26 at pg. 14).

13). The ROA reflects Respondents REPLY filed before Shreves's RESPONSE (ROA 22 and 23), and then the RESPONSE from Shreves was filed after the ORDER was entered.

14). At all times relevant Shreves was incarcerated at MSP as

an inmate.

SUMMARY OF THE ARGUMENT

The Court maintains supervisory control over the district courts of the State of Montana (Mont. Const. Art. VII §2). The repeated and intentional failures to timely file Shreves's mailed items to the court amounts to official misconduct and demonstrates prejudice toward Shreves due to his status as an inmate and prisoner. This prejudice is displayed in the late filings of the Petition and his RESPONSE to the motions to dismiss, and the missing motion to substitute the judge and the attachments for the request to waive the filing fee were missing also. family should not have to walk to the Court and produce proof of mailing before the mail is located and filed.

Shreves has standing to bring this Petition for Review. He may challenge the constitutionality of any statute at anytime. Furthermore, he has an economic interest in the matter as he was billed a copay for the treatment at MSP. He is also the only class that the statute impacts and applies to (inmate's complaints). He also suffers problems of unending pain and suffering due to the doctor's actions. Pain that continues to this day due to Dr. Rees's actions in delaying the treatment and diagnosis and now in the records that are incomplete and were sent to Idaho to dictate Shreves's care upon arrival here.

The CHCR amounts to an unconstitutional delegation of authority through MCA 37-1-331. The CHCR has no standards or guidelines and their decisions are dependent upon the panel's whim. The CHCR abused its discretion when it ignored Shreves's substantial evidence that Dr. Rees violated many of the ARMs that govern his interactions with all patients as a licensed physician in Montana.

The Court should determine that the Court's, and staff's, actions amounted to definitive steps to give an advantage to REspondents at the lower court. It also should determine that MCA 37-1-331 unconstitutionally delegated authority and strike that statute as unconstitutional, and determine that Shreves's complaint against Dr. Rees should be forwarded to the Medical Examiner's Board for investigation and further proceedings.

STANDARD OF REVIEW

The Question of Standing is a question of law that is reviewed de novo. JRN Holdings L.L.C. v. Dearborn Meadows Landowners Ass'n 2021 MT 204 ¶17 (citing Heffernan v. Missoula City Council 2011 MT ¶28 (citations omitted)).

Review of any agency decision not classified as a contested case under MAPA to determine whether the decision was arbitrary, capricious, unlawful, or not supported by substantial evidence. Mont. Env'tl. Infor. Ctr. v. Mont. Dept. of Env'tl quality 2020 MT 288, ¶16 (Mont. 2020); Mont. Env'tl. INfor Ctr. v. Mont Dep't of Env'tl 2016 MT 9, ¶14... review under this standard focuses on whether the agency action is (1) unlawful, or (2) arbitrary and capricious. North Fork Press Ass'n v. Dept of State Lands 238 Mont. 451, 459 (1989) "While our review of agency decisions is generally narrow, we will not automatically defer to the agency without carefully reviewing the record and satisfying ourselves that the agency has made a reasoned decision" Clarkfork Coal ¶21.

This Court's review of constitutional questions is plenary Williams v. Bd. of County Commsrs 2013 MT 243 ¶23 (2013). The constitutionality of a statute is a question of law, and we review a district court's legal conclusions for correctness. Walters v. Flasthead Concrete

ARGUMENTSI. DID THE DISTRICT COURT ABUSE ITS DISCRETION OR OTHERWISE VIOLATE SHREVES'S RIGHTS WHEN REFUSING TO FILE HIS MAILINGS AND RESPONSE?

The issues detailed in Shreves's Declaration (ROA 9) at ¶9-17 outlines the issues with mail being timely filed that was sent to the court from him. The District Court ROA also shows that his RESPONSE (ROA 26) to the motions to dismiss was filed AFTER the *order* (ROA 25 compared to ROA 26) and Defendants obviously received the RESPONSE from Shreves because they filed a REPLY brief to it (ROA 22) and D.O.C. officials asked for more time in order to file a REPLY to Shreves's RESPONSE (ROA 23 filed on 7-23-23). Then the District Court entered its ORDER without any reference to Shreves's Response clearly in the Court's possession and probably on "Susan's Desk" again.

In short, The District Court, and its staff, took deliberate steps to give the State advantages and stop Shreves from even putting an argument on the record. The best that Shreves may ask is this Court take action to prevent the Court's at the District Court level exercise their discretion to misplace, or nonfile, inmate's claims simply because they are of the mind that inmates have no right to access the courts. If the court in this matter is allowed to ignore the filings of inmates and no one is held to account for it, when will they stop determining who may access the courts and who may not? Inaction is the same as participation due to the Supreme Court's authority to oversee the courts of this State. It was bad enough that the State DOC officials changed the Lexis Program to take out the case Shreves cited in his PETition, and remove it from Shreves's viewing when he used it to make the argument for standing in the first instance.

II. DOES SHREVES HAVE STANDING TO BRING THIS PETITION?

To bring a case or controversy, a plaintiff must allege "a past, present, or threatened injury to a property or civil right," and such injury must be redressable through court action. 350 Mont. V. State of Montana 2023 MT 87 (2023); Heffernan 2011 MT 91, ¶33 ("[A] general or abstract interest in the constitutionality of a statute...is insufficient for standing absent a direct causal connection between the alleged illegality and specific and definite harm personally suffered, or likely to be personally suffered, by the plaintiff."). Courts should consider the importance of the question to the public and "whether the statute at issue would effectively be immunized from review if the plaintiff were denied standing" Heffernan at ¶33.

Without review of this decision by the CHCR it is effectively immune from review by anyone. Shreves is an aggrieved party with standing to bring this Petition. He was billed for the services, and thus has an economic interest that the standards of professional practice be applied equally (enumerated in ARM 24.156.625) and,

the ARM states in part, violations include "conduct likely to deceive, defraud, or harm the public" (ARM 24.156.625 (c)). Lying and misrepresenting medical diagnosis, and collecting wages for such behaviour, harms the public and Shreves. Shreves is also the only class that the statute impacts.

It applies solely to incarcerated complaints about the medical care. No other party or class has the same interest as Shreves and all those incarcerated to make sure the medical staff provides the level of care they were licensed to provide. The District Court's decision rested on the determination that it was not a contested case, so there was nothing to review. (Order at 3-4). The one thing the

ORDER failed to address was how this blatant and vicious refusal to even forward such clear misrepresentations that defrauded the public and inflicted pain on Shreves amounted to a violation of Shreves' rights and privileges. Shreves is entitled to equal protection of the law, not some arbitrary and whimsical decision meant to protect the very medical providers as those who reviewed the complaint and found it failed to state a claim, all without articulating any standard to reach ~~that~~ conclusion and not listing any facts it relied on.

III. THE CHCR IS AN UNCONSTITUTIONAL DELEGATION OF AUTHORITY AND MCA 37-1-331 SHOULD BE DECLARED UNCONSTITUTIONAL AND STRUCK.

Under MCA 2-4-702(1)(b), Shreves challenges MCA 37-1-331 as invalid and unconstitutional as written and as applied.

The law making power may not be granted to an administrative body to be exercised under the guise of administrative discretion. Accordingly, in delegating powers to an administrative body with respect to the administration of statute, the legislature must ordinarily prescribe a policy, standard, or rule for their guidance and must not vest them with an arbitrary and uncontrolled discretion with regard thereto, and a statute or ordinance which is deficient in this respect is invalid. In other words, in order to avoid the pure delegation of legislative power by the creation of an administrative agency, the legislature must set limits on such agency's power and enjoin on it a certain course of procedure and rules of decision in the performance of its function and if the legislature fails to prescribe with reasonable clarity the limits of power delegated to an administrative agency, or if those limits are too broad, its attempt to delegate is a nullity.

...the legislature may constitutionally delegate its legislative functions to an administrative agency, but it must provide, with reasonable clarity, limitations upon the agency's discretion and provide the agency with policy guidance....A statute is complete and validly delegates administrative authority when nothing with respect to a determination of what is the law is left to the administrative agency, and its provisions are sufficiently clear, definite, and certain to enable the agency to know its rights and obligations.

State v. Mathis 2003 MT 112, ¶15, 42 (2003).

"When no standards or guidelines are present, the exercise of the delegated power may result in 'arbitrary and capricious actions, dependent wholly on the will and whim 'of others'" Shannon v. city

of Forsyth 205 Mont. 111, 115 (1983).

Legislative delegation of authority is analyzed under a 3 tier test for such delgation"

A three part framework for analyzing whether a statute's provisions are sufficiently clear and definite....we consider whether (1) the policy behind the statue is present; (2) rationale behind the statue, even if implicit, is evident; and (3) the Statute provides a standard or guide for the proper delegation of legislative power.

State v. Akhmedli 2023 MT 120 ¶9 (2023)

A. POLICY BEHIND STATUTE

The purpose of a review team is to review complaints filed by an inmate against a licensed or certified provider of health care or rehabilitative services for services that were provided to the person wh ile the person was detained or confined in a county detention center or incarcerated under legal custody of the department of corrections.

EXCERPT FROM MCA 37-1-331(1) in part.

This appears to be the policy behind the Statute.

It must be stated here and foremost, the very creation of this statute alone contradicts the District Court's fidings that the DOC and care or treatment of inmates is immune from MAPA. If it was immune, why pass this legislation at all to protect the medical providers from complaints about their violations of the ARMs they are tasked to follow.

B. RATIONALE BEHIND THE STATUTE, EVEN IF IMPLICIT, IS NOT EVIDENT

Nowhere does this statute explain why inmate's complaints have to be screened by this special panel instead of just being submitted to ~~the~~ regular panel that screens all complaints per MCA 37-1-307(1)(d). The CHCR is designed to function in a less efficient manner in that it does not even lauch its own investigation before reaching its conclusions.

37-1-331 contains no explicit rationale behind the creation and purpose of the statute. It states that inmate complaints must be reviewed by health care providers with "at least 2 years of experience in providing health care or rehabilitative services in a correctional facility or program" MCA 37-1-331(2). Nowhere does the statute have a explanation for its rationale. It is redundant in that complaints for unprofessional conduct are screened already according to 37-1-307(1)(d). That panel determines "whether there is reasonable cause to believe that a licensee has violated a particular statutes, rule, or standard justifying disciplinary proceedings."

That panel explains that is must have "reasonable cause," but no such limitation exists on the CHCR and the standard set forth in statute, if a standard is even truly enumerated. The panel is also deemed to be an "agency" (Id.), but nothing in the statute for the CHCR explains what it is, let alone an agency.

Finally, the screening panel for the examiner's board is made up of at least one board member, and the final decision is made by the full board after a hearing (Id.). The only articulation of such a standard in the CHCR is that it puts the complaints subject to "correctional" review. This in and of itself is discriminatory and subjects inmates to a lower standard of care than that expected of the other licensees practicing medicine in montana.

C. STATUTE FAILS TO PROVIDE A GUIDE FOR DELEGATION OF POWER

The Statute fails to indicate that the CHCR is subject to any rules or standards when they make their review of complaints from incarcerated individuals. The one guideline is overly broad and provides an unfettered discretion with regard to review of complaints and whether they state a claim. It states "The review team shall

review each complaint with regard to the healthcare or rehabilitative services provider's scope of practice." (MCA 37-1-331(5)). This makes no indication of the scope of that review and if it even includes complaints of unprofessional conduct as enumerated in the ARM's. It could mean only for malpractice, but it offers no limits or guidelines as to the review of complaints itself.

The term "review" with nothing more indicates no discretion to weigh the facts or determine truth, only a comparison to some unarticulated standard defined as "possible violation" without enumerating a violation of what rules or guidelines. No guidance as to what a violation is and it further states, it "shall review each complaint with regard to the... provider's scope of practice" and does nothing to outline what constitutes the scope of that practice beside appointing a member from that chosen field.

None of this has anything to do with articulating the standard of review and it should. The standard at the pleading stage in any federal action subject to review is that all well pleaded facts must be taken as true. Here, it appears that they just considered all the facts pleaded as untrue, but you can not determine what they did because they refused to provide any analysis and the statute does not make them provide any either. One more failure to articulate the guidelines for rendering a decision.

The CHCR has no checks and balances and has true unfettered discretion. Current board members may not participate on the CHCR (MCA 37-1-331(2)) and picking team members from the "same discipline and scope of practice as the provider against whom a complaint was filed" means nothing because they all must have 2 years or more of correctional healthcare providing inmates care. What possible bearing

does that have on the issue of whether the facts presented amounts to a plausible claim, if that is the standard they are using. The complaint is reviewed by colleagues and the inmate is not even allowed to object to panel members elected to review the complaint, indeed, he or she is not even told who is on the panel.

MCA 37-1-331(1) also does not carry mandatory language *that* the CHCR "shall" report "the possible violation." Nothing in the statute defines or guides the review and what their obligations are. The team just gets to ignore or believe whatever it wants to with no constraints and no investigation or inquiry of its own. The Statute does not grant the power for the CHCR to weigh evidence or make other decisions, just a simple review, and that review is not limited in any manner and therefore amounts to an illegal delegation of authority. Even if this court determines that the statute is constitutional, it should determine that Shreves's complaint should have been forwarded for an investigation and process and failing to do so amounted to an abuse of discretion.

IV. THE CHCR ABUSED ITS DISCRETION WHEN IT REFUSED TO FORWARD SHREVES'S COMPLAINT FOR INVESTIGATION.

An agency has an obligation to 'examine the relevant data and articulate a satisfactory explanation for its action, including a rational connection between the facts found and the choice made'....An agency's decision 'so at odds with the information gathered in the record' is arbitrary and the product of caprice....agency 'actions must also be consistent; an internally inconsistent analysis' signals arbitrary and capricious action.

Mont. Env'tl. Info. Ctr. v. Mont. Dept. of Env'tl. Quality
2019 MT 213 ¶26 (2019)

The one-page denial to Shreves was addressed to "Mr. Bauer" in its body (ROA 1 at Exh. 5). It stated no law or rules violated or even if they looked at the rules to determine if they were violated. It made no reference to the evidence used to reach the determination.


It failed to discuss any of the information Shreves provided and said nothing about the clear misrepresentations in Shreves' records about refusing medical care and the failure to note the ultrasound indicating the blood clot and Dr. Rees writing that Shreves had no indications in his legs (ROA 1 at Exh. 6 &7). These were all violations of the ARMs and should have been forwarded for investigation and further proceedings.

Simply because Shreves was an inmate does not change the requirements for the work Dr. Rees performs for the State and to the inmates. Misrepresentations in the records adversely effected Shreves's care and defrauded the State of the service they are paying the staff to provide. It was clear violations of the ARMs and no reason existed to fail to forward them.

CONCLUSION

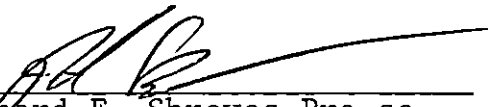
tHIS Court should determine that the District Court Clerk's office and staff are subject to discipline for official misconduct. That Shreves's complaint should have been forwarded by the CHCR. That the Statute creating the CHCR is unconstitutional as written and as applied. That the facts alleged amount to a plausible claim against Dr. Rees for violating his license and defrauding the state. And any other relief that Shreves is entitled to and this court deems proper.

Dated April 1, 2024

Signed 
Richard E. Shreves
Petitioner Pro-se

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4)(b) of the Montana Rules of Appellate Procedure, I certify that this APPELLANT'S OPENING BRIEF is printed on Mono-spaced typeface of no more than 10.5 characters per inch and is 17 pages in length, excluding the items exempted by Rule 11(4)(d).

Signed 
Richard E. Shreves Pro-se

CERTIFICATE OF SERVICE

I hereby certify on the 2 of April, 2024, I deposited a true and correct copy of the APPELLANT'S OPENING BRIEF + ORDER in the Idaho State Correctional Center's prison mail, postage prepaid, to be sent to the following:

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Signed 
Richard Shreves