

368 S.W.3d 259
Missouri Court of Appeals,
Western District.

STATE **BOARD** OF REGISTRATION
FOR THE **HEALING ARTS**, Appellant,

v.

Christine A. **TRUEBLOOD**, M.D., Respondent.

No. WD 73875.

|
April 3, 2012.

|
Motion for Rehearing and/or Transfer to
Supreme Court Denied May 1, 2012.

|
Application for Transfer
Denied July 3, 2012.

Synopsis

Background: Licensee filed a complaint seeking review of decision of the **Board** of Registration for the **Healing Arts** granting her a license to practice medicine, but placing it under probation for a period of five years. The Administrative Hearing Commission (AHC) modified terms of physician's license by reducing period of probation to fifteen months. **Board** petitioned for judicial review. The Circuit Court, Cole County, [Daniel Richard Green, J.](#), affirmed. **Board** appealed.

Holdings: The Court of Appeals, [Alok Ahuja, J.](#), held that:

[1] **Board's** decision was subject to de novo review by Administrative Hearing Commission (AHC), and

[2] evidence supported **Board's** decision to reduce period of licensee's probation to fifteen months.

Affirmed.

West Headnotes (5)

[1] Administrative Law and Procedure

🔑 Scope

On appeal from the circuit court's review of an agency decision, the Supreme Court reviews the action of the agency, not the action of the circuit court.

[2 Cases that cite this headnote](#)

[2] Administrative Law and Procedure

🔑 Substantial evidence

The correct standard of review for administrative decisions is whether, considering the whole record, there is sufficient competent and substantial evidence to support the agency's decision. *V.A.M.S. Const. Art. 5, § 18.*

[3 Cases that cite this headnote](#)

[3] Administrative Law and Procedure

🔑 Law questions in general

When the agency's decision involves a question of law, the appellate court reviews the question de novo.

[2 Cases that cite this headnote](#)

[4] Health

🔑 Proceedings on application

Decision of the **Board** of Registration for the **Healing Arts** granting licensee a probated license to practice medicine was subject to de novo review by the Administrative Hearing Commission (AHC), without deference to the **Board's** decision, rather than more deferential review under which **Board's** order could only be modified if the **Board** had abused its discretion or its decision was arbitrary, capricious, unreasonable or unlawful; while the **Board** may have had original discretion to decide whether to impose probation on licensee's license, and to establish terms of that probation, once the application for review was filed, the decision became one for the AHC. *V.A.M.S. §§ 324.038, 334.100.*

[1 Cases that cite this headnote](#)

[5] Health

🔑 Proceedings on application

Evidence of licensee's rehabilitation was sufficient to support Administrative Hearing Commission's (AHC) decision to modify terms of her license to practice medicine by reducing period of probation from 5 years, as imposed by **Board** of Registration for **Healing Arts**, to period of 15 months; licensee demonstrated continuous and verified sobriety for almost four years, acknowledged her past misconduct, and explained actions she had taken to prevent its recurrence, mental-health and substance-abuse professionals testified as to licensee's rehabilitation and prospects for future, and mechanisms were in place to monitor licensee's continued compliance with her recovery program, and to alert **Board** in event that licensee should relapse.

[Cases that cite this headnote](#)

Attorneys and Law Firms

*260 [Glenn E. Bradford](#) and [Robert G. Groves](#), Kansas City, MO, for appellant.

[Nicole L. Sublett](#), Jefferson City, MO, for respondent.

Before: [ALOK AHUJA](#), P.J., and [THOMAS H. NEWTON](#) and [JAMES E. WELSH](#), JJ.

Opinion

[ALOK AHUJA](#), Judge.

Christine **Trueblood** applied for licensure as a physician in Missouri in 2009. The **Board** of Registration for the **Healing Arts** granted her a license, but placed it under probation for a period of five years. **Trueblood** filed a complaint with the Administrative Hearing Commission (the "AHC" or "Commission"), seeking review of the **Board's** decision. Following an evidentiary hearing, the AHC modified the terms of **Trueblood's** license by reducing the period of probation to fifteen months, which **Trueblood** had served by the time of the AHC's decision. The **Board** then petitioned for judicial review before the Circuit Court of Cole County. The circuit court affirmed the AHC's decision. The **Board** now appeals to this Court, arguing that the AHC failed to give appropriate deference to the **Board's** decision, and that the

Board had legal cause to require five years' probation. We affirm.

Factual Background

Trueblood entered medical school in 1998. Prior to entering medical school, **Trueblood** had been in an automobile accident. She experienced continuing knee pain as a result of injuries sustained in the accident, and was prescribed opiate painkillers, which she took for a number of years.

Trueblood graduated from medical school in 2002, and began a residency program in psychiatry at the University of Kansas Medical Center in July of that year. Shortly after beginning her residency, **Trueblood** obtained a Drug Enforcement Administration ("DEA") license. In approximately October 2002, **Trueblood** began using her DEA license to write false prescriptions for controlled substances for herself. Over the course of the next several years, **Trueblood** confessed her substance abuse, was placed on medical leave from her residency program, participated in a drug rehabilitation program, resumed her residency program, and relapsed into drug use. Following her relapse, **Trueblood** claimed that she was taking up to 60 **Percocet** tablets daily, which she acquired by writing daily prescriptions and filling them "in pharmacies all over the city."

Trueblood was arrested at a Costco store on November 9, 2006, while trying to fill a prescription. She surrendered her *261 DEA license that night, and was charged with writing false prescriptions and identity theft. She was also placed on administrative leave from her residency program. **Trueblood** completed further drug rehabilitation programs, as well as a diversion program through the state court, and in 2008 was given permission to complete her residency program by the Kansas State **Board** for the **Healing Arts**. She completed her psychiatry residency on October 19, 2008.

Trueblood submitted an application for licensure as a physician in Missouri on March 3, 2009. On May 11, 2009, the **Board** issued its Order granting her a license subject to a five-year probationary period.

Trueblood sought review before the AHC. A contested-case hearing was held before a Commissioner on June 16, 2010. At the hearing both the **Board** and **Trueblood** were represented by counsel, and presented evidence. The AHC

issued its Decision on August 11, 2010. The Commissioner agreed with the **Board** that cause existed to issue **Trueblood** a probated license, but modified **Trueblood's** license by reducing the period of probation from five years to fifteen months. Given the time that had passed since the **Board's** decision, **Trueblood's** license was unrestricted as of the date of the AHC's Decision. In her sixteen-page Decision, the Commissioner cited evidence of **Trueblood's** continuous and verified sobriety since November 2006; her continuing participation in therapy and self-help groups; her agreements with the Kansas Medical Advocacy Program (“KMAP”) and the Missouri Physicians Health Program (“MPHP”), both of which monitor **Trueblood's** participation in substance-abuse prevention and drug-testing programs; her candid testimony concerning her past drug abuse and her commitment to her sobriety; and the “enthusiastic and unequivocal” testimony offered by **Trueblood's** witnesses, including her therapist and representatives from both KMAP and MPHP.

The **Board** filed its petition for judicial review in the Circuit Court of Cole County on September 1, 2010. On April 4, 2011, the circuit court entered its judgment affirming the decision of the AHC. The **Board** then appealed to this Court.

Standard of Review

[1] [2] [3] On appeal from the circuit court's review of an agency decision, this Court reviews the action of the agency, not the action of the circuit court.

....

The correct standard of review for administrative decisions governed by [article V, section 18](#) of the Missouri Constitution—which includes **healings arts** cases—is “whether, considering the whole record, there is sufficient competent and substantial evidence to support the [agency's decision]. This standard would not be met in the rare case when the [agency's decision] is contrary to the overwhelming weight of the evidence.” When the agency's decision involves a question of law, the court reviews the question *de novo*.

Albanna v. State Bd. of Regis. for the Healing Arts, 293 S.W.3d 423, 428 (Mo. banc 2009) (citations and footnote omitted).

Analysis

The **Board** challenges the AHCs decision on two grounds. First, it contends that the AHC erred by conducting a *de novo* review of the **Boards** decision, rather than a more deferential review under which the **Boards** Order could only be modified if the **Board** had abused its discretion, or its decision was arbitrary, capricious, unreasonable, or unlawful. Second, *262 the **Board** claims that it had good cause to grant **Trueblood** a probated license given her past drug use and deception. We find neither argument persuasive.

I.

[4] The **Board** first argues that the AHC erred by failing to give due deference to the **Board's** decision to grant **Trueblood** a license probated for five years. According to the **Board**, pursuant to §§ 536.140–.150,¹ the AHC can modify a **Board** decision only when that decision is an abuse of discretion or otherwise arbitrary, capricious, unreasonable or unlawful. We disagree.

A.

The AHC's review of the **Board's** decision is governed by statutory provisions found in multiple chapters of Missouri's Revised Statutes.

The **Board** of Registration for the **Healing Arts** falls within the Division of Professional Registration of the Department of Insurance, Financial Institutions and Professional Registration. §§ 324.001.2, .11(1). [Section 324.038](#) (formerly § 620.149, RSMo 2000) authorizes **Boards** within the Division of Professional Registration to issue probationary licenses in specified circumstances:

1. Whenever a **board** within or assigned to the division of professional registration ... may refuse to issue a license for reasons which also serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action against a holder of a license, the **board**, as an alternative to refusing to issue a license, may, at its discretion, issue to an applicant a license subject to probation.
2. The **board** shall notify the applicant in writing of the terms of the probation imposed, the basis therefor, and the date such action shall become effective. The notice shall also advise the applicant of the right to a

hearing before the administrative hearing commission, if the applicant files a complaint with the administrative hearing commission within thirty days of the date of delivery or mailing by certified mail of written notice of the probation. If the **board** issues a probated license, the applicant may file, within thirty days of the date of delivery or mailing by certified mail of written notice of the probation, a written complaint with the administrative hearing commission seeking review of the **board's** determination. Such complaint shall set forth that the applicant or licensee is qualified for nonprobated licensure pursuant to the laws and administrative regulations relating to his or her profession. Upon receipt of such complaint the administrative hearing commission shall cause a copy of such complaint to be served upon the **board** by certified mail or by delivery of such copy to the office of the **board**, together with a notice of the place of and the date upon which the hearing on such complaint will be held. Hearings shall be held pursuant to chapter 621, RSMo. The burden shall be on the **board** to demonstrate the existence of the basis for imposing probation on the licensee. If no written request for a hearing is received by the administrative hearing commission within the thirty-day period, the right to seek review of the **board's** decision shall be considered waived.

Chapter 334, which governs the **Board** of Registration for the **Healing Arts** specifically, *263 contains a similar provision authorizing the issuance of a probated license.

The **board** may refuse to issue or renew any certificate of registration or authority, permit or license required pursuant to this chapter for one or any combination of causes stated in subsection 2 of this section. The **board** shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of the applicant's right to file a complaint with the administrative hearing commission as provided by chapter 621. As an alternative to a refusal to issue or renew any certificate, registration or authority, the **board** may, at its discretion, issue a license which is subject to probation, restriction or limitation to an applicant for licensure for any one or any combination of causes stated

in subsection 2 of this section. The **board's** order of probation, limitation or restriction shall contain a statement of the discipline imposed, the basis therefor, the date such action shall become effective, and a statement that the applicant has thirty days to request in writing a hearing before the administrative hearing commission. If the **board** issues a probationary, limited or restricted license to an applicant for licensure, either party may file a written petition with the administrative hearing commission within thirty days of the effective date of the probationary, limited or restricted license seeking review of the **board's** determination. If no written request for a hearing is received by the administrative hearing commission within the thirty-day period, the right to seek review of the **board's** decision shall be considered as waived.

§ 334.100.1.

Here, the AHC found that the **Board** had properly pled, and proved, that **Trueblood's** license was subject to probation based on three of the grounds listed in § 334.100.2. Specifically, the AHC found that a probated license was justified under § 334.100.2(4)(g), based on “[f]inal disciplinary action by any ... licensed hospital or medical staff of such hospital in this or any other state,” because **Trueblood** was twice suspended from her residency program at the University of Kansas Medical Center. The AHC also found that the **Board** had established that **Trueblood's** license was subject to probation under § 334.100.2(4)(h), for “prescribing ... any drug [or] controlled substance ... for other than medically accepted therapeutic ... purposes,” based on her admission that “she wrote prescriptions for herself to feed her addiction to opiates.” Finally, the Commission agreed that probation was justified under § 334.100.2(13), for **Trueblood's** “[v]iolation of the drug laws or rules and regulations of this state, ... any other state, or the federal government.”

The AHC's authority to review the **Board's** decision in this case is set forth in § 621.045.1, which provides:

The administrative hearing commission shall conduct hearings and make findings of fact and conclusions of law in those cases when, under the law, a license issued by any of the following agencies may be revoked or suspended or when the licensee may be placed on probation or when an agency refuses to permit an applicant to be examined upon his or her qualifications or refuses to issue or renew a license of an applicant who has passed an examination for licensure or who possesses the qualifications for licensure without examination:

....

Board of Registration for the **Healing Arts**

Section 621.135 provides that

The provisions of chapter 536, RSMo, and any amendments thereto, except *264 those provisions or amendments which are in conflict with sections 621.015 to 621.198, ... shall apply to and govern the proceedings of the administrative hearing commission and the rights and duties of the parties involved.

B.

The AHC's Decision asserts the right to review the **Board's** decision to issue **Trueblood** a probated license *de novo*, without deference to the **Board's** decision:

We have jurisdiction to hear **Trueblood's** complaint because she seeks our review of the decision to issue a probated license. The **Board** has the burden to prove the basis for imposing probation. We exercise the same authority that has been granted to the **Board**. Therefore, we simply decide the application *de novo*.

The **Board** argues that the Commission is required to defer to the **Board's** licensing decision, and that it may only reject the **Board's** decision if that decision is unlawful, unreasonable, arbitrary, capricious, or an abuse of discretion. To the contrary, however, the AHC's assertion of a right

to conduct *de novo* review is supported by multiple prior decisions of this Court.

Thus, in *State Board of Registration for the Healing Arts v. Finch*, 514 S.W.2d 608 (Mo.App.1974), the AHC ordered that a physician be permitted to take a medical licensing examination despite his earlier conviction of first-degree murder, after the **Board** refused to allow the physician to take the examination. As in this case, [t]he **Boards** principal argument in [*Finch* was] that the evaluation of Dr. Finch's past conduct and of his present moral character was a matter to be decided in the discretion of the **Board**. *Id.* at 612. The plurality opinion in *Finch* rejected this argument, in light of the authority granted to the AHC under the Administrative Hearing Commission Act enacted in 1965 (now chapter 621). In *Finch*, the **Board** acknowledged that the AHC was entitled to independently determine the relevant facts; the plurality held that the AHCs conceded fact-finding role could not be divorced from the discretionary decision as to whether an applicant should be barred from licensure. *Id.* at 613–15. The Court concluded:

[T]he Administrative Hearing Commission Act vested authority in the Commission to find the facts with respect to the seriousness of Dr. Finch's original felonious conduct, the extent to which he has repented and rehabilitated himself and all other factors bearing on whether he should be eligible for licensing. The Act further authorized the Commission to make conclusions of law (based on the facts found) as to whether Dr. Finch should be considered an eligible candidate. These powers conferred upon the Commission are inconsistent with the retention of a controlling discretion in the latter regard by the **Board**, and the original primacy granted to the **Board** in this regard must therefore be held to have been repealed by Section 11 of the Administrative Hearing Commission Act.

Id. at 615.²

We reaffirmed the holding of *Finch* in *State Board of Registration for the Healing Arts v. DeVore*, 517

S.W.2d 480 (Mo.App.1974), in which the **Board** once again argued that “it has the sole discretion to refuse to grant licensure” based on an applicant’s prior dishonorable conduct and felony conviction. *Id.* at 484. As in *Finch*, we rejected this argument:

[T]he Act does not deny the **Board** the initial authority ... to deny an application for license by an individual the **Board** believes to be of bad moral character or by a person admittedly guilty of past unprofessional or dishonorable conduct including conviction of a felony or any one or more of the eleven specified acts, practices or habits proscribed by s 334.100. This initial authority to deny obviously involves and requires the exercise of discretion. But if the **Board** determines to deny an application for licensure then, upon complaint of the applicant, the Act authorizes and directs the Administrative Hearing Commission to conduct a hearing on the qualifications of the applicant and make its findings of fact and conclusions of law on the issues of whether the applicant is entitled to examination for licensure, or licensure, as the case may be.

Id. at 485.

More recently, in *Department of Social Services v. Mellas*, 220 S.W.3d 778 (Mo.App. W.D.2007), the Department of Social Services (“DSS”) argued that the Commission should have deferred to it with regard to the seriousness of the infractions committed by a physician who used the wrong billing codes in seeking reimbursement under the Medicaid program. Following *Finch*, we rejected the argument that the AHC was required to defer to the DSS’ initial administrative decision:

The department argues that the commission should have deferred to it because it had specialized knowledge and was better equipped to determine the gravity of the infractions. The department’s assertion that the commission was obligated to defer to it is incorrect. To the extent that the department is in a better position to determine

the gravity of the infractions, its obligation under the scheme for the commission’s review devised by the General Assembly is to share its insights with the commission and to persuade the commission of the soundness of its policy.

In Section 621.055, RSMo 2000,^[3] the General Assembly mandated that the commission have the power to review the department’s decision. In fulfilling this role, the commission’s decision becomes the decision of the department. “The [commission’s] function is to render the administrative decision of the agency.” *The commission actually steps into the department’s shoes and becomes the department in remaking *266 the department’s decision. This includes the exercise of any discretion that the department would exercise. State Board of Registration for the Healing Arts v. Finch*, 514 S.W.2d 608, 614 (Mo.App.1974).

220 S.W.3d at 782–83 (emphasis added; other citations omitted). This discussion was followed in *Department of Social Services v. Senior Citizens Nursing Home District of Ray County*, 224 S.W.3d 1, 15–16 (Mo.App. W.D.2007). See also *Mo. Dep’t of Soc. Servs. v. Admin. Hrg. Comm’n*, 826 S.W.2d 871, 874 (Mo.App. W.D.1992) (“In reviewing the DSS decision, the AHC is performing an administrative review. The AHC ‘simply determines on evidence heard, the administrative decision of the agency involved.’ The decision of the AHC then becomes the decision of the department. This is not a reconsideration of the [issue decided by the DSS] analogous to a judicial review wherein the record is scrutinized for legal error.” (citations omitted)).

Finally, in *Missouri Real Estate Appraisers Commission v. Funk*, 306 S.W.3d 101 (Mo.App. W.D.2010), we reiterated the Commission’s original discretion, in a case involving the Real Estate Appraisers Commission’s refusal to issue an applicant a general real estate appraiser certification:

Though the issue of whether Funk demonstrated competence and knowledge in his commercial appraisals was the rationale for the denial of his general real estate appraiser’s certification by the MREAC, the scope of the AHC’s hearing was not restricted to this issue. Instead, *the AHC was entitled to conduct a fresh inquiry into whether Funk was deserving of certification, based upon the entire record of*

relevant admitted evidence pertaining to certification. Thus, the inquiry of the AHC was whether, at the time of the AHC hearing, Funk met the requirements for general real estate appraisal certification as outlined in sections 339.511.3 and 339.535.

Id. at 105 (emphasis added; citation and footnotes omitted).

Consistent with the cases discussed above, other decisions, issued in a variety of contexts, recognize that the function of the AHC in administrative review proceedings is to render the agency's final decision, exercising the same authority as the underlying agency.⁴

*267 While §§ 324.038 and 334.100 may have given the **Board** the *original* discretion to decide whether to impose probation on **Trueblood's** license, and to establish the terms of that probation, once an application for review was filed, the decision became one for the AHC. In making its decision, the AHC properly exercised the full measure of discretion initially vested in the **Board**, without deference to the **Board's** decision.

C.

Against the substantial body of caselaw discussed above, the **Board** argues that the AHC's assertion of *de novo* review overstates the AHC's authority, because a more deferential standard of review is specified in provisions of the Missouri Administrative Procedure Act (the "MAPA"), §§ 536.140 and 536.150. However, those statutes address *judicial* review, by *a court*, of final agency action; they do not govern the relationship between the Commission and the **Board**. Section 536.140 provides that "[t]he court shall hear the case without a jury," § 536.140.1 (emphasis added), and specifies "[t]he scope of *judicial review* in all contested cases." § 536.140.2 (emphasis added). Similarly, § 536.150.1 specifies that, where "there is no other provision for *judicial inquiry*," "such decision may be reviewed by suit for injunction" (emphasis added); like § 536.140, § 536.150 repeatedly refers to the exercise of review by "the court." These provisions cannot apply to the AHC, because "[t]he AHC is not a court," and cannot perform *judicial* review because "[j]udicial review ... is a purely judicial function" which "the constitution vests exclusively in the courts." *Lederer v. Dep't of Soc. Servs.*, 825 S.W.2d 858, 862, 863 (Mo.App. W.D.1992).

The **Board** argues that, unless §§ 536.140 and .150 supply the standard of review to be applied by the AHC in cases like this one, the reference to "[t]he provisions of chapter 536" in § 621.135 would be meaningless. What the **Board** ignores, however, is that the MAPA does not merely address judicial review of agency decisions; it also contains multiple provisions for the conduct of contested-case hearings by administrative agencies themselves. *See generally* §§ 536.063–.090. It is *those* provisions which apply to the AHC's review of decisions like the present one, not §§ 536.140 or .150. *Lederer*, 825 S.W.2d at 864.

In *Lederer*, the AHC did what the **Board** argues it should have done in this case: it reviewed a decision of the Personnel Advisory **Board** " 'on the whole record' under the standards of § 536.140.2." *Id.* at 862.⁵ As noted above, however, this Court held in *Lederer* that the AHC could not exercise judicial review under § 536.140, but was instead required to conduct a hearing under the MAPA's contested-case procedures. *Id.* at 864. The **Board's** argument concerning §§ 536.140 and .150 is directly contrary to our decision in *Lederer*.⁶

We recognize that, in the case of discipline imposed upon an *existing* license, the *268 relevant statutes establish a bifurcated procedure, under which the AHC finds the predicate facts as to whether cause exists to discipline a license, and the **Board** then exercises final decisionmaking authority concerning the discipline to be imposed. *See* §§ 334.100.4, 621.110; *Tendai v. Bd. of Regis. for the Healing Arts*, 161 S.W.3d 358, 364–65 (Mo. banc 2005).⁷ Sections 324.038 and 334.100 contain no similar bifurcated procedure with respect to new or renewal licenses, however, even though the decision to probate a new license is based upon the same grounds (found in § 334.100.2) which can justify disciplining an existing license. The fact that the legislature explicitly preserved the **Board's** ultimate discretionary authority with respect to the discipline of existing licenses, but failed to include similar provisions in connection with the imposition of probation on new licenses, confirms that the **Board's** discretionary authority was not similarly retained in this context. *See Finch*, 514 S.W.2d at 615 ("it should be pointed out that in the case of license revocations, the legislature purposefully and distinctly set forth a precise division of functions, leaving no room for doubt or speculation as to the legislative intention. No similar division of functions has been specified with respect to original licensure covered by § 161.302[, RSMo 1969, now § 621.120]").

II.

In its second Point, the **Board** contends that the AHC erred by ordering that **Trueblood** be issued an unrestricted license as of the date of the AHC's decision, "because the **Board** had legal cause to grant [**Trueblood**] only a probated license to practice medicine."

The **Board's** Point Relied On is misdirected, in two respects. First, based on our discussion in § I, above, the issue here is not whether *the Board* had sufficient cause to take the action it took, but instead whether *the AHC* could properly limit **Trueblood's** probation to the period prior to its decision. It is the AHC's Decision which is under review here, not the **Board's**. See *Molder v. Mo. State Treasurer*, 342 S.W.3d 406, 409–11 (Mo.App. W.D.2011). Second, as discussed in § I.A, above, the AHC *agreed* with the **Board** that "legal cause [existed] to grant [**Trueblood**] only a probated license," based on the grounds specified in §§ 334.100.2(g), (4)(h), and (13). The point of disagreement is not whether grounds existed to probate **Trueblood's** license, but instead the *duration* of that probation.

[5] Viewed from the proper perspective, we conclude that sufficient competent evidence supports the AHC's Decision, and that the Decision is not contrary to the overwhelming weight of the evidence. As we described above, the AHC's decision cites to substantial evidence of **Trueblood's** rehabilitation: her continuous—and verified—sobriety for almost four years as of the date of the AHC's decision; her candid and credible testimony acknowledging her past misconduct and explaining the actions she had

taken to prevent its recurrence; the testimony of other mental-health and substance-abuse professionals as to **Trueblood's** rehabilitation and prospects for the future; and the mechanisms in place, through **Trueblood's** agreements with KMAP and MPHP, to monitor her continued compliance with her recovery program, and to alert the **Board** in the event that **Trueblood** should relapse. The **Board** argues that the mechanisms in place are *269 insufficient to protect the public. On the contrary, there was plainly a sufficient evidentiary basis in the record for the AHC to conclude that, given **Trueblood's** prior recovery efforts, the mechanisms in place to assure her future sobriety were adequately protective. Although the **Board** argues that the AHC erroneously relied on **Trueblood's** interest in earning an income, and allowed her pecuniary interests to override the interests of the public, the Decision only refers to **Trueblood's** need to maintain gainful employment in response to the **Board's** argument that her adoption of a "new moral code" was not sincere, but was economically motivated. Nothing in the Commission's decision suggests that it allowed the protection of the public to be superseded by other considerations.

Conclusion

We affirm the circuit court's judgment, which affirmed the August 11, 2010 Decision of the Administrative Hearing Commission.

All concur.

All Citations

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Footnotes

- 1 Unless otherwise indicated, statutory citations refer to the 2000 edition of the Revised Statutes of Missouri, as updated by the 2011 Cumulative Supplement.
- 2 The plurality opinion in *Finch* was joined by three members of the six-judge court which decided the case. Judge Pritchard, joined by Judge Swofford, filed a concurring opinion which suggests that the AHC, and any subsequent reviewing court, was limited to determining whether *the Board* had abused its discretion, based on the record developed before, and the facts found by, the Commission. 514 S.W.2d at 617–19. While Judge Pritchard's concurring opinion arguably supports the **Board's** position, as we explain in the text it is the plurality opinion which has been followed in later cases.
- 3 Section 621.055, like § 621.045, provides that "[a]ny person authorized pursuant to section 208.153, RSMo, to provide services for which benefit payments are authorized pursuant to section 208.152, RSMo, may seek review by the administrative hearing commission of any of the actions of the department of social services specified in subsection 2, 3, 4 or 5 of section 208.156, RSMo. The review may be instituted by the filing of a petition with the administrative hearing commission. The procedures applicable to the processing of such review shall be those established by chapter 536, RSMo." *Mellas* rejected DSS' argument that *Finch* was distinguishable because it arose under a different statute: "[t]he

commission's authority in *Finch*, even arising under a different statute, is the same as the commission's authority to hear the present case." 220 S.W.3d at 783. By the same token, we conclude that *Mellas* is fully applicable in this case.

- 4 See, e.g., *Custom Hardware Eng'g & Consulting, Inc. v. Dir. of Revenue*, 358 S.W.3d 54, 58 (Mo. banc 2012) ("Because the AHC announces the agency decision, the AHC does not exceed its authority by increasing the director [of revenue]'s [tax deficiency] assessment."); *Dep't of Soc. Servs. v. Little Hills Healthcare, L.L.C.*, 236 S.W.3d 637, 644 (Mo. banc 2007) (rejecting argument of Division of Medical Services "that the Commission erred in awarding Hospital additional monies because it should have deferred to DMS's calculations," with the observation that "[t]he legislature's intent was for the Commission to render the agency's decision"); *Whitehead v. Dir. of Revenue*, 962 S.W.2d 884, 885 (Mo. banc 1998) ("In [tax] deficiency proceedings the AHC's jurisdiction is *de novo*, even to the extent the AHC may change the director's assessment on grounds not previously raised by either the taxpayer in a protest or by the director in a deficiency notice."); *J.C. Nichols Co. v. Dir. of Revenue*, 796 S.W.2d 16, 20–21 (Mo. banc 1990) ("Because the Commission announces the decision of the agency, the Commission's decision in this case to adjust the Director's [tax deficiency] assessment is within the authority of the Commission. It is within the authority of the Commission because it is within the authority of the agency."); *Mo. Ethics Comm'n v. Wilson*, 957 S.W.2d 794, 798 (Mo.App. W.D.1997) ("The function intended by the legislature for the AHC is to render, on the evidence heard, the administrative decision of the agency. The decision of the AHC then becomes the decision of the department." (citations omitted)); *Monroe Cnty. Nursing Home Dist. v. Dep't of Soc. Servs.*, 884 S.W.2d 291, 293 (Mo.App. E.D.1994) ("Although the AHC steps into the shoes of the DMS when reviewing appeals from its decisions, AHC is only authorized to exercise the agency's adjudicative authority, not its rulemaking authority.");
- 5 The AHC's decision in *Lederer* was issued by Commissioner Paul Spinden, later a judge of this Court, and the author of this Court's decision in *Mellas*, 220 S.W.3d 778.
- 6 In *Asbury v. Lombardi*, 846 S.W.2d 196 (Mo. banc 1993), the Missouri Supreme Court rejected *Lederer's* construction of § 36.390.9, RSMo 1986, and instead held § 39.390.9 to be unconstitutional in certain respects. *Id.* at 201, 201 n. 8. *Lederer's* general discussion of the nature of, and differences between, administrative and judicial review remains good law, however; the Supreme Court has continued to cite this discussion post-*Asbury*. See *State ex rel. Hilburn v. Staeden*, 91 S.W.3d 607, 612 (Mo. banc 2002); *Murray v. Mo. Hwy. & Transp. Comm'n*, 37 S.W.3d 228, 234 (Mo. banc 2001); *Chastain v. Chastain*, 932 S.W.2d 396, 399 n. 15 (Mo. banc 1996).
- 7 Overruled on other grounds, *Albanna v. Bd. of Regis. for the Healing Arts*, 293 S.W.3d 423, 428 n. 2 (Mo. banc 2009).