

Licenses and the Law Series, Part IX: The Appeal



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In addition, this article was co-authored by former Attorneys Lindsey Vechik and Peyton Hildebrand.

In our [last article](#), we explained the second part of the hearing: your defense. Now, we discuss the appeals process.

Unfortunately, licensing boards do not always rule in your favor. However, you can have a chance to have your case heard before an Arkansas circuit court, and it is important to know how this process works.

What Is the Governing Law?

Most administrative agencies in Arkansas are governed by the Arkansas Administrative Procedure Act ("APA"). Others, such as the Arkansas Public Service Commission, are governed by their own statutes. All agencies, however, provide for some type of appeal process before an Arkansas state circuit court.

Who Can Make an Appeal?

While there are certain administrative proceedings in which a non-lawyer can appear and represent a party to the proceeding, a non-lawyer may not represent you or any other person or legal entity in an appeal from an administrative decision to a court. Only a lawyer can represent an individual or legal entity in an appeal of an administrative decision to a court. Any appeal filing in the court will be ruled a nullity and of no legal force or effect if filed by a non-lawyer. Of course, you can represent yourself.

What Is the Deadline for Appeal?

Under the APA, appeals from decisions of Arkansas licensing boards must be made within thirty days of the board's order. In addition to filing your petition with the court, copies of the petition must be served upon the agency and all other parties of record.

To Whom Will You Be Appealing?

Under the APA, appeals are made to one of either two courts: (1) the circuit court of any county in which the petitioner resides or does business; or (2) the Pulaski County Circuit Court.

What Will the Court Be Reviewing?

It is within the court's discretion as to whether additional evidence may be presented in addition to the agency proceeding record, as well as whether testimony may be taken before the court. That is why, as highlighted in previous series articles, it is of the utmost importance that a licensee put their best defense forward in front of the board at licensing board hearings. Lawyers in all cases are permitted to write briefs and make oral arguments at trial.

How Will Trial Be Conducted?

Board hearing appeals are not subject to the Arkansas Rules of Civil Procedure. Therefore, some things may look different from your typical trial. For example, though it is in state circuit court, it is an appeal and therefore not tried before a jury.

What Is the Standard of Review?

Licensing board decisions are given substantial deference. This is because Arkansas courts believe that administrative agencies are better equipped than courts, by specialization, insight through experience, and more flexible procedures to determine and analyze underlying legal issues affecting their agencies. Consequently, this recognition accounts for the limited scope of judicial review of administrative action and the refusal of Arkansas courts to substitute their judgment and discretion for that of the administrative agency. The APA recognizes only six reasons that a court should reverse a board hearing's final order.

The first is when the order was in violation of constitutional or statutory provisions. Courts review potential violations of constitutional or statutory provisions *de novo*, which means that the court decides what these provisions mean without giving deference to the board's interpretation.

The second is when the order is in excess of the agency's statutory authority. Again, here, the court will independently determine the scope of the agency's statutory authority.

The third instance is if the order was made upon unlawful procedure. While deference is given to licensing boards to conduct hearings in their own manner, licensing boards must be consistent in the way they conduct hearings by following their own regulations.

Next, the court will reverse if the order was affected by other error or law. While deference is given to licensing boards, not all licensing board members have legal training. Therefore, it is important that you have an attorney represent you in your appeal to spot whether the licensing board made any legal errors.

Fifth, if the order was not supported by substantial evidence of record, the court will reverse. Substantial evidence is valid, legal, and persuasive evidence that a reasonable mind might accept as adequate to support a conclusion and force the mind to pass beyond conjecture. The substantial evidence standard tips the scales in favor of affirming the board's findings.

Lastly, the court will reverse the board's decisions if the order was arbitrary, capricious, or characterized by abuse of discretion. This means that the board's decision was patently unreasonable, made without consideration of the facts in total disregard of the circumstances, and lacked any basis that might lead a reasonable person to the same conclusion. The requirement that a licensing board's decision not be arbitrary, capricious, or characterized by abuse of discretion is less demanding than the requirement that it be supported by substantial evidence. Therefore, when a licensing board's decision is supported by substantial evidence, it automatically follows that it cannot be arbitrary, capricious, or characterized by abuse of discretion.

What Are the Potential Outcomes?

If the court rules in your favor, the court will ordinarily remand to the licensing board to consider the issue anew in accordance with the court's findings. As a result, the court ruling in your favor will usually not be the final step in the process. It is important to keep working with your attorney after a court reversal to ensure that everything goes smoothly as the board reconsiders your matter on remand.

If a court does not rule in your favor, your matter can be appealed to the Arkansas Court of Appeals. The Arkansas Court of Appeals will abide by the same standards that are outlined in this article.

The article was co-authored by Mitchell Williams Law Clerk Evan Nelson.

This is the ninth article of the Mitchell Williams “Licenses and the Law” Series, which explains the process of when a licensed professional receives a complaint against his/her license. The series will be published bi-monthly for a total of 10 articles. The tenth article will publish on July 12, 2022.

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For more information about complaints against professional licenses, contact [Attorney Stuart Miller](#) at smiller@mwlaw.com or [Attorney Peyton Hildebrand](#) at phildebrand@mwlaw.com.