

## **What is Administrative Law?**

When I tell someone that I practice administrative law, the most frequent question I get in response is: what is administrative law? Simply put, if the government takes action against you or your business, the legal process to defend yourself against such an action is called administrative law. Various administrative agencies created by the legislature are given the authority to issue rules and make determinations against individuals that have the force of law. In the state of Washington alone there are nearly 200 state agencies. But the breadth of administrative law does not stop there. Counties and cities are also involved in issuing decisions that can affect an individual's rights in many different areas, each with its own administrative appeal process. This article addresses some specific examples of administrative law as applied by Washington state agencies and counties and goes on to discuss appeal options after the initial administrative hearing.

## **Types of Administrative Law Cases**

### **Medical Professional Licensure Defense**

Actions by the Department of Health's Medical Quality Assurance Commission (MQAC), and the Department of Social and Health Services (DSHS) are examples of just two of the agencies that can take actions to affect a medical professional's license. For example, if MQAC determines that a physician has committed unprofessional conduct, it can take action against a professional to summarily revoke, suspend or restrict a license to protect the public. If the physician and MQAC are unable to reach an agreement in a settlement conference, a formal administrative hearing will take place where both sides will be given the opportunity to present evidence and testimony regarding the charges.

The DSHS Resident Client Protection Program concerns actions by DSHS against a nurse or other medical assistant where DSHS alleges that abuse, neglect, or financial exploitation of a vulnerable adult has occurred. If DSHS prevails on such a charge, the affected medical professional will be placed on a registry that would prevent this person from working in an unsupervised capacity with vulnerable adults in the future. If charges are brought by DSHS, the medical professional is given appeal rights to have an administrative law judge hear evidence and testimony by both sides to determine if abuse, neglect or financial exploitation of a vulnerable adult occurred. Even if you are not medically licensed, DSHS Adult Protective Services can make findings alleging that anyone abused, neglected, or financially exploited a vulnerable adult. For example, DSHS can allege that a mother neglected her vulnerable adult daughter. If Adult Protective Services makes such a substantiated finding against the mother, she could administratively appeal this determination.

### **Executive Ethics Board Complaints / Investigations**

The Washington State Executive Ethics Board investigates government employees for actions that violate the law relating to Ethics in Public Service. If charges are brought by the Board, a public sector employee could face fines or other discipline. An administrative hearing is offered to the employee, but an outside administrative law judge with the Office of Administrative Hearings is only used upon request and even if requested, only to decide evidentiary matters. Otherwise, the Board makes a final determination at the hearing.

### **Overpayments**

The Health Care Authority (HCA) oversees the Medicaid program in Washington and is charged with ensuring that payments to Medicaid providers are proper and in compliance with federal and state regulations. The HCA's Office of Program Integrity will conduct audits and otherwise investigate Medicaid providers. If an audit occurs, the HCA will demand repayment of funds paid by Medicaid to the provider for a specified time period. The HCA will also statistically extrapolate its overpayment

determination which may turn an overpayment in the hundreds of dollars to an overpayment in the thousands of dollars.

The implications of such an overpayment can be financially impossible to overcome for some providers, with bankruptcy serving as the only logical answer. However, the HCA gives providers an opportunity to contest these overpayment determinations with an administrative hearing.

### **Land-Use**

A city or county can make a decision concerning use of nearby land that can affect the use of your own property. When making these types of decisions, the government official will have to make a decision on whether the environment is adversely affected under the State Environmental Policy Act (SEPA) and whether other statutes, such as the Shoreline Management Act, is implicated. The agency might make other determination's concerning special use permits that must be in compliance with local city or county codes. If citizens feel that such determinations were wrongly made, citizens can have their opinions heard in public comment or by testifying at a public hearing. However, if a citizen is directly impacted by the government's decision, one may be able to administratively appeal the land-use decision to try and show that agency determination was in error.

### **Unemployment Claims**

The Employment Security Department (ESD) makes determination s relating to unemployment claims filed by those no longer working for an employer. For example, if an employee files for unemployment benefits, but the employer claims that the employee was fired for misconduct, ESD will conduct a hearing to determine why the employee was fired. If either the former employee or employer disagrees with the ESD determination, further appeal rights to the Office of Administrative Hearings are allowed.

### **Workers' Compensation**

If an employee is injured on the job and a claim is made to the Department of Labor and Industries (L&I), certain benefits may be obtainable by the employee. If the employee or employer does not agree with a L&I decision, there may be opportunities to file a protest with L&I and to administratively appeal to the Board of Industrial Insurance Appeals.

### **Tax Assessment**

An individual can administratively appeal an adverse determination by the Department of Revenue if the individual feels that they do not owe any tax, if they were denied a refund, or if a business registration or re-seller permit was revoked or denied, among other reasons. If the final administrative decision is still in favor of the Department of Revenue, a further appeal can be filed by the individual or business with the Board of Tax Appeals.

### **DSHS Adult Protective Services**

In its goal to protect vulnerable adults, DSHS Adult Protective Services ("APS") can issue substantiated findings against individuals who are alleged to have abandoned, abused (including sexual, physical and mental), neglected, and financially exploited a vulnerable adult. These individuals could be roommates, friends, or family members of the vulnerable adult. If APS makes a substantiated finding of abuse, neglect, or financial exploitation against such an individual, a right to administratively appeal this finding is given. If the individual decides to appeal, an administrative hearing takes place where APS attempts to prove that the individual abused, neglected, or financially exploited a vulnerable adult. If the administrative law judge agrees with DSHS, the individual has the option of appealing to the DSHS Board of Appeals. If on the other hand , the administrative law judge agreed with the individual, APS would not be able to seek review with the Board of Appeals as that

decision is considered the final decision of DSHS. However, if the individual loses and appeals to the Board of Appeals, a closed record review will take place. A closed record review simply means that no further evidence or testimony will be considered - the appeal will be based on the evidence and testimony of the initial hearing. If APS prevails at the Board of Appeals, the individual can seek judicial review at superior court.

### **DSHS Resident Client Protection Program**

The DSHS Resident Client Protection Program are similar to the hearings conducted by APS in the above example in that it seeks to protect vulnerable adults from instances of abuse, neglect and financial exploitation. In these cases however, DSHS brings these charges against a medical professional, such as a nurse, or nursing assistant. The administrative process would be the same in this case as in the example above with APS.

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*Administrative Law is among Stephen Manning's areas of emphasis. Prior to joining Bean, Gentry, Wheeler & Peternell in Olympia, Stephen served as an Assistant Attorney General for the Washington State Attorney General's Office. In that capacity, Stephen represented the Health Care Authority and DSHS in cases ranging from administrative hearings to disputes at the Washington State Court of Appeals.*

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