STATE OF MICHIGAN

COURT OF APPEALS

COUNCIL OF MICHIGAN DENTAL SPECIALTIES, Plaintiff-Appellee,	UNPUBLISHED February 23, 2001
v	No. 227736 Ingham Circuit Court
BOARD OF DENTISTRY and DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES, Defendants-Appellants.	LC No. 99-091034-AA

Before: O'Connell, P.J., and Zahra and B.B. MacKenzie*, JJ.

PER CURIAM.

In this declaratory judgment action, defendants appeal as of right from an order granting plaintiff's motion for summary disposition. We affirm.

Plaintiff is an association of practicing dental specialists. Defendants are agencies responsible for licensing and regulation of the practice of dentistry in Michigan. At times prior to July 2000, plaintiff's members administered oral and written examinations to applicants seeking certification in dental specialties. Those exams were developed by the parties and used exclusively in Michigan.

In February 1999, defendant Board of Dentistry voted to utilize an exam developed and administered by the northeast regional board of dental examiners (NERB) in place of the state dental specialty exam. Thereafter, pursuant to the administrative procedures act, MCL 24.264; MSA 3.560(164), plaintiff sought a declaratory ruling that the board's adoption of the NERB specialty exam was invalid. Defendants denied that request. In December 1999, plaintiff filed the present declaratory action, seeking a stay of the administrative preparations to implement the NERB exam and an order directing the board to prepare state-administered exams. Eventually, plaintiff brought a motion for summary disposition, arguing that defendants could not substitute the NERB exam for the state exam without promulgating new administrative rules. The trial court granted that motion and ordered defendants to administer the state dental specialties exam.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Thereafter, at defendant's request, this Court stayed the trial court's order. Our Supreme Court denied plaintiff's request to reverse the stay,[1] and ordered expedited consideration of this appeal.

On appeal, defendants first argue that plaintiff lacks standing to challenge the decision to use the NERB specialty exam. Defendants contend that only the individual applicants for the specialty exams could have standing to challenge the decision. Whether a party has standing is a question of law that we review de novo. *Dep't of Consumer & Industry Services v Shah*, 236 Mich App 381, 384; 600 NW2d 406 (1999). The concept of standing focuses on whether a party's interest in the outcome of litigation will ensure sincere and vigorous advocacy. *Detroit Fire Fighters Ass'n v Detroit*, 449 Mich 629, 633 (Weaver, J.), 643 (Riley, J., concurring); 537 NW2d 436 (1995); *Kuhn v Secretary of State*, 228 Mich App 319, 333; 579 NW2d 101 (1998). However, standing is not determined simply by a party's demonstration of its ability to vigorously advocate a case. *Detroit Fire Fighters Ass'n, supra*. "The plaintiff must also demonstrate that his substantial interest will be adversely affected in a manner distinct from the citizenry at large, i.e., an actual injury or likely chance of immediate injury different from the public." *Id.* at 643. A party may demonstrate a personal interest in the outcome of litigation by showing that it has been injured or that it represents a person or group of persons who have been injured. *Id*. at 634, 643 n 4; see *Muskegon Building & Construction Trades v Muskegon Area Intermediate School Dist*, 130 Mich App 420, 428; 343 NW2d 579 (1983), overruled on other grounds 455 Mich 546 (1997) and *In re Filing Requirements for Complaints & Applications Filed Under the Michigan Telecommunications Act*, 210 Mich App 681, 692; 534 NW2d 234 (1995).

MCR 2.605(A)(1) provides that a court has authority to enter a declaratory judgment in a case of actual controversy within its jurisdiction, declaring the rights and other legal relations of an interested party. As noted *supra*, plaintiff satisfied the requirement of MCL 24.264; MSA 3.560(164) by seeking a declaratory ruling from defendant Board of Dentistry prior to bringing the present action for a declaratory judgment. However, the parties dispute whether plaintiff or its members are interested parties with substantial interests in the subject of the present litigation.

Plaintiff asserted below that defendants violated the administrative procedures act, MCL 24.201 *et seq*.; MSA 3.560(101) *et seq*., when it adopted the NERB exam by resolution, and not through promulgation of a new administrative rule. Plaintiff claims that the public notice and public hearings attendant to the promulgation of a new administrative rule should be required in order to facilitate open discussions regarding the merit of and reasons for replacing the state exam with the NERB exam. According to plaintiff, its members have substantial interests in questions concerning specialty exams and licensure and have been adversely affected by defendants' decision to adopt the new exam without providing public notice or public hearings. We conclude that plaintiff's individual members have substantial interests in whether the NERB exam is a proper replacement for the previously used state exam.

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[1] As a result of the stay, defendants administered the NERB exam to twenty-four applicants in July 2000.

While the general public has an interest in the quality of dental care available in the state, the interest of plaintiff's members in the reputation of the specialties is a distinct interest particular to the specialists themselves. The substance of the specialty exam has a direct bearing on which individuals will eventually be certified as specialists. As such, current specialists have substantial interests in ensuring that the exam is adequately stringent to preserve the reputation of the specialties. Moreover, already certified specialists will compete in the marketplace with specialists certified under the new exam. Therefore, those current specialists have valid economic interests in ensuring that qualifications remain consistent. Under these circumstances, plaintiff, as representative of individual specialists adversely affected by defendant's decision to adopt the NERB exam by resolution, has standing. *Detroit Fire Fighters Ass'n, supra*; *Kuhn, supra*.

Defendants next argue that the trial court erred in granting summary disposition for plaintiff because defendants have discretion to implement whichever dental specialty exam they determine meets the needs of the certification process. We review a trial court's decision on a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Likewise, statutory interpretation is a question of law that we review de novo. *Oakland Co Bd of Rd Comm'rs v Michigan Property & Casualty Guaranty Ass'n*, 456 Mich 590, 610; 575 NW2d 751 (1998).

Defendants claim that the public health code, MCL 333.1101 *et seq*.; MSA 14.15(1101) *et seq*., and the administrative procedures act, MCL 24.201 *et seq*.; MSA 3.560(101) *et seq*., provide the board discretion to adopt and use a dental specialty exam different from the state exam, without promulgating new administrative rules allowing a substitute exam. We disagree.

The primary goal of judicial interpretation of statutes is to ascertain and give effect to the Legislature's intent. *Frankenmuth Mut Ins v Marlette Homes, Inc*, 456 Mich 511, 515; 573 NW2d 611 (1998). If the plain and ordinary meaning of a statute is clear, judicial construction is neither necessary nor permitted. *Cherry Growers, Inc v Agricultural Marketing and Bargaining Bd*, 240 Mich App 153, 166; 610 NW2d 613 (2000). We may not speculate as to the probable intent of the Legislature beyond the words expressed in the statute. *In re Schnell*, 214 Mich App 304, 310; 543 NW2d 11 (1995). When reasonable minds may differ as to the meaning of a statute, the courts must look to the object of the statute, the harm it is designed to remedy, and apply a reasonable construction which best accomplishes the statute's purpose. *Marquis v Hartford Accident & Indemnity*, 444 Mich 638, 644; 513 NW2d 799 (1994).

MCL 333.16178; MSA 14.15(16178) provides:

> (1) Unless otherwise necessary for a board to fulfill national or regional testing requirements, the department shall conduct examinations or other evaluations necessary to determine qualifications of applicants for initial licensure or registration at least annually and may conduct other investigations or evaluations necessary to determine the qualifications of applicants. A board may accept passing a national or regional examination developed for use in the United States for the purpose of meeting a state board examination or a part thereof.

(2) An individual who fails to pass a required examination may be reexamined to the extent and in a manner determined by the board.

(3) The department shall give public notice of the time and place of a required regular initial licensure or registration examination or evaluation in a manner it considers best not less than 90 days before the date of the examination or evaluation.

Subsection (1) plainly states that the board may accept a passing score on a national or regional examination for the purpose of meeting a state examination or a part thereof. However, contrary to defendants' claim, that statute does not grant the board unfettered discretion to wholly replace the state examination. The statute specifies that other exam scores may be accepted to meet the state exam, implying that the state-administered exam may not be wholly eliminated. Furthermore, we do not find any other provision in the public health code or administrative procedures act granting defendants discretion to replace the state dental specialist examination referenced in § 16178.[2]

The Board of Dentistry has promulgated rules regarding dental specialties. See 1994 AACS, R 338.11501 *et seq*. An administrative agency is under a duty to follow its own rules. *Detroit Base Coalition for the Human Rights of the Handicapped v Dep't of Social Services*, 431 Mich 172, 189; 428 NW2d 335 (1988). Rule 11505 provides, in pertinent part:

An applicant for a specialty certificate shall comply with all of the following requirements:

* * *

(b) Except as provided in R 338.11503(2) [exempting applicants in oral pathology], secure a minimum converted score of 75 in the state board written and clinical examination in the specific specialty pursuant to these rules. Submission of verification that an applicant for specialty certification has successfully passed the American board written examination is satisfactory compliance with the requirement for the written portion of the state board examination for certification in Michigan for the applicant's specialty.

(c) The provisions of subdivision (b) of this rule are waived if the applicant has provided satisfactory evidence of the successful completion of the American board specialty written and clinical examinations. Other substantially equivalent specialty examinations approved by the board may be considered. [1994 AACS, R 338.11505.]

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[2] In addition to § 16178, on appeal defendants generally cite MCL 333.16174; MSA 14.15(16174), MCL 333.16608; MSA 14.15(16608) and MCL 24.207(j); MSA 3.560(107)(j), as support for adopting the NERB exam by resolution. However, none of those provisions grant defendants discretion to replace the state exam.

Subdivision (b) requires an applicant to attain a minimum score of seventy-five on the state specialty exam. Subdivision (c) provides that the minimum score on the state exam may be waived if an applicant provides satisfactory evidence of successful completion of the American board exams or other substantially equivalent exams.[3] However, the ability to waive the requirement to successfully meet the state exam requirements upon a request by an applicant does not vest the board with authority to eliminate the state exam.

Upon review of the statutory and administrative schemes, we are convinced that subdivision (c) was not intended to provide the board discretion to wholly replace the state exam with a regional or other exam. The Legislature granted the board power to certify dental specialists. MCL 333.16608; MSA 14.15(16608). However, that power cannot include the power to adopt by resolution any specialty exam the board sees fit given that the plain language of § 16178(1) suggests that the state exam may not be wholly replaced by national or regional exams.[4] Also, MCL 333.16174; MSA 14.15(16174), includes general requirements for dental specialty certification, but does not suggest that the state exam referenced in § 16178 and the administrative rules may be replaced. There is no administrative rule allowing the board to adopt a new dental specialty exam by resolution. Under the plain, unambiguous language of the current administrative rules, the board may not wholly replace the state dental specialty exam with a regional examination. Therefore, we conclude that defendants acted contrary to the express administrative rules when they adopted the NERB exam by resolution.

We note that in reaching our conclusion, we do not rely on MCL 333.16145; MSA 14.15(16145). That section provides:

> (1) A board may adopt and have an official seal.
>
> (2) A board or task force may promulgate rules necessary or appropriate to fulfill its functions as prescribed in this article.
>
> (3) Only a board or task force shall promulgate rules to specify requirements for licenses, registrations, renewals, examinations, and required passing scores.

The trial court ruled that section specifically requires defendants to promulgate a new rule in order to adopt and use an examination other than the previously used state exam. We disagree that § 16145 includes such a requirement. We recognize that our Legislature's use of the word "shall" is generally used to designate a mandatory provision. See *Depyper v Safeco Ins Co of America*, 232 Mich App 433, 438; 591 NW2d 344 (1998). However, the word "shall" in § 16145(3) should not be read to specially require promulgation of new administrative rules, but rather to express which entities have rule-making authority in the enumerated areas. The plain language of subsection (3) establishes that only a board or task force has rule-making authority.

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[3] We make no determination regarding whether the NERB exam qualifies as a "substantially equivalent" exam under R 338.11505(c).

[4] See *supra*, our discussion of § 16178(1).

The statute does not require those entities to promulgate new rules.[5] Any other interpretation would render the word "only" in subsection (3) surplusage or nugatory. See *Hoste v Shanty Creek Management, Inc*, 459 Mich 561, 574; 592 NW2d 360 (1999). In construing a statute, effect should be given to every phrase, clause and word. *Sun Valley Foods v Ward*, 460 Mich 230, 237; 596 NW2d 119 (1999); *Hoste, supra*. Our interpretation of § 16145 is further supported by subsection (2), which provides that the board or task force *may* promulgate rules necessary or appropriate to fulfill its functions.

Affirmed.

/s/ Peter D. O'Connell
/s/ Brian K. Zahra
/s/ Barbara B. MacKenzie

[5] We recognize that our conclusion that the current administrative rules do not allow defendants to substitute tests necessarily suggests that a new rule must be promulgated if such substitution is to be made. However, § 16145 does not, itself, require that new rules be promulgated.