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CASE SUMMARY: DENTAL EXAMS AND THE STANDARD OF REVIEW

Affirmed that the standard of review is reasonableness as per *Vavilov*. In order for a finding by the administrative body that not implementing additional evaluation or assessment measures was unreasonable to be made, the appellant must have brought this up before the administrative decision-making body.

Administrative law – Decisions reviewed – Dental Board Association and College – Failure to hold a hearing – Judicial review – Application – Procedural requirements and fairness – Standard of review – Reasonableness – Professions – Dentists

Pour v. Canada (National Dental Examining Board), [2020] O.J. No. 556, 2020 ONSC 555, Ontario Superior Court of Justice, February 10, 2020, R.C. Boswell, M.A. Penny and L.G. Favreau JJ.

Dr. Pour immigrated to Canada in 2013. He had practiced dentistry for twenty-three years in Iran. The National Dental Examination Board of Canada (“NDEB”) required that he pass a test consisting of fundamental knowledge, clinical judgment, and clinical skills. Candidates had three attempts to pass the tests. Dr. Pour passed the first two assessments but had difficulty with his clinical skills assessments. On his third attempt of his clinical skills assessment, Dr. Pour marginally failed. Dr. Pour appealed. His appeal was dismissed by way of brief written reasons by the Appeal Committee. Dr. Pour sought judicial review of the board’s decision.

It was held that the standard of review was reasonableness as per *Minister of Citizenship and Immigration v. Vavilov*, 2019 SCC 65. Dr. Pour argued that the Appeals Committee’s decision was unreasonable and procedurally unfair because they failed to follow their own bylaws by not ordering an oral hearing, failed to justify why they did not order an oral hearing, and the procedure was unfair to Dr. Pour because he did not receive a post-evaluation review upon completion of his clinical skills assessment.

Dr. Pour argued that his submissions to the appeal committee established that there were significant procedural irregularities. Under the by-laws if a procedural irregularity is established of such significance that it may change an appellant’s “fail” to a “pass” then the appellant’s results should be referred to a special hearing. Dr. Pour argued that there were two procedural irregularities that should have been enough to trigger an oral hearing.

Dr. Pour argued that there was an irregularity in the test where he was required to simulate removing a cavity and placing a filling. He purportedly drilled too deep. He argued that the caries in the typodont were defective, causing him to have to drill deeper to remove all the cavity. The grading guidelines were strict regarding how deeply a candidate could drill and still pass the assessment. However, Dr. Pour did not submit to the Appeals Committee that his typodont was defective, rather he submitted that his work met the criteria for a higher grade. As well, Dr. Pour did not point to any evidence to bolster this submission. Regarding leaving unsupported enamel, Dr. Pour again referred to deficiency in the typodont.

Dr. Pour argued that because the Appeals Committee did not expressly comment on his failure to meet the threshold test for an oral hearing, the decision was unreasonable. Dr. Pour simply did not raise the issue in his written submissions before the Appeal Committee about a procedural irregularity. As a result, it was held that this was not required by the Appeals Committee.

As a matter of practice, evaluators would conduct post-evaluation reviews. While the NDEB did not have any record that this was done, they asserted that it would have been done in a case such as this. In any event, it was found that it was not necessary for a post-evaluation to be done in order for there to have been procedural fairness. This ground also failed as there was no evidence that he did not receive a post-evaluation review. As well, this issue was not raised before the Appeal Committee.

The application for judicial review was dismissed.

This case was digested by [Deanna C. Froese](#), and first published in the LexisNexis® Harper Grey Administrative Law Netletter and the Harper Grey Administrative Law Newsletter. If you would like to discuss this case further, please contact Deanna C. Froese at dfroese@harpergrey.com.