SC20-1814

In the Supreme Court of Florida

AGENCY FOR HEALTH CARE ADMINISTRATION,
Petitioner,

v.

YBOR MEDICAL INJURY & ACCIDENT CLINIC, INC.,
Respondent.

ON PETITION FOR DISCRETIONARY REVIEW FROM THE
DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT
Case No. 20-2750

AMICUS BRIEF OF THE STATE OF FLORIDA IN SUPPORT OF PETITIONER

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IDENTITY OF AMICUS CURIAE AND INTEREST IN THE CASE

The Attorney General submits this brief for the State of Florida as amicus curiae in support of Petitioner. The Attorney General may appear in any suit in which the State has an interest. *See* § 16.01(4), Fla. Stat.

The Agency for Health Care Administration ("AHCA" or "the agency") is the executive agency tasked with ensuring that Florida's health care facilities meet requisite quality standards, including by issuing original licenses and processing renewal applications. The agency "licenses and/or certifies and regulates 40 different types of health care providers, including hospitals, nursing homes, assisted living facilities, and home health agencies. In total, the [agency] licenses, certifies, regulates or provides exemptions for more than 48,000 providers." Health Quality Assurance, https://ahca.myflorida.com/mchq/index.shtml (last visited July 8, 2021).

In the decision below, the Second District Court of Appeal erroneously stayed, pending appeal, the agency's decision not to issue Respondent a renewal license for its health care clinic. The State has an interest in this case because that ruling threatens the

integrity of not only AHCA's licensing scheme but also the licensing schemes of the State's many other administrative agencies.

SUMMARY OF THE ARGUMENT

This case arises out of AHCA's decision not to grant Respondent's license renewal application because the application omitted the basic information necessary to evaluate Respondent's fitness to continue operating as a health care clinic.[1] Respondent petitioned for review in the Second District, which imposed an automatic stay pending appeal pursuant to Section 120.68(3), Florida Statutes. Under that provision, courts must grant a stay "as a matter of right" when a final agency decision "has the effect of suspending or revoking a license," unless the agency can prove that a stay "would constitute a probable danger to the health, safety, or welfare of the state." The Second District concluded that Section 120.68(3) applies even when, as here, an agency merely declines to

[1] Florida law requires AHCA to "deem[] incomplete" and "withdraw[] from . . . consideration" any application missing the requisite information. § 408.806(3)(b), Fla. Stat. That is what AHCA did here.

issue a renewal license because the renewal application is incomplete.

That unprecedented decision was incorrect. The stay properly applies only when an "agency decision" has the "effect" of rendering inoperative "a license." *See* § 120.68(3), Fla. Stat. The agency's decision to deny an application for license renewal has no such effect. Rather, that type of decision merely declines to grant a new, future license. Unsurprisingly, no court has concluded otherwise.[2]

The Second District's interpretation of Section 120.68(3) would, moreover, upend the administrative scheme. It would encourage renewal applicants, particularly those that expect a possible denial,

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[2] *See Beach Club Adult Ctr., LLC v. AHCA*, 303 So. 3d 582, 582–83 (Fla. 1st DCA 2018) (holding, based on materially similar facts, that the appellant was "not entitled to a stay under section 120.68(3)" because the final order did not revoke its license but merely deemed it withdrawn); *Terrell Oil Co. v. Dep't of Transp.*, 541 So. 2d 713, 715 (Fla. 1st DCA 1989) (finding "that the 'stay as a matter of right' of section 120.68(3)" was unavailable because there is "a qualitative difference between the type of order appealed here that denies renewal of a[] license that has expired or is about to expire and one which suspends or revokes an active license"); *Silver Show, Inc. v. Dep't of Bus. & Prof'l Regul., Div. of Alcoholic Beverages & Tobacco*, 763 So. 2d 348, 350 (Fla. 4th DCA 1998) ("We conclude that in a licensing proceeding the applicant is not entitled to a stay as a matter of right under section 120.68(3).").

to provide less information to the agency rather than more in the hopes of obtaining at least a stay of the agency's denial while the matter is tied up in the courts. Meanwhile, the agency would be forced to treat an applicant as licensed even without basic information needed to verify that the provider satisfies the requisite standards for a renewal. The result would be a wave of meritless appeals, which would not only threaten the health and safety of the citizens of Florida, but also burden the appellate courts and administrative agencies alike.

ARGUMENT

An agency's denial of a renewal application is not subject to the automatic stay provision of Section 120.68(3), which correctly applies only when an agency acts on an existing "license." The statute does not apply when an agency declines to grant a new license following a renewal application.

I. SECTION 120.68(3) DOES NOT PROVIDE AN AUTOMATIC STAY WHEN AN AGENCY DECLINES TO RENEW A LICENSE.

This Court reviews questions of statutory interpretation de novo. *State v. Dorsett*, 158 So. 3d 557, 560 (Fla. 2015). And "determination of the meaning of a statute begins with the language

of the statute." *State v. J.A.R.*, No. SC20-1604, 2021 WL 2461211, at *2 (Fla. June 3, 2021) (citing *Lopez v. Hall*, 233 So. 3d 451, 453 (Fla. 2018)). "[W]hen the language of a statute to be construed is unambiguous, it must be accorded its plain and ordinary meaning." *Id.* (quoting *Brown v. State*, 715 So. 2d 241, 243 (Fla. 1998)). The meaning of a statutory term "is the meaning generally attached to that term . . . at the time the statute was enacted," *Republic of Arg. v. Weltover, Inc.*, 504 U.S. 607, 612–13 (1992), which here is 1976.

Starting with the text, the statute reads in pertinent part:

> The filing of the petition does not itself stay enforcement of the agency decision, but *if the agency decision has the effect of suspending or revoking a license, supersedeas shall be granted as a matter of right* upon such conditions as are reasonable, *unless the court, upon petition of the agency, determines that a supersedeas would constitute a probable danger to the health, safety, or welfare of the state*.

§ 120.68(3), Fla. Stat. (emphasis added). The statute applies to only those "agency decision[s]" that "ha[ve] the effect of suspending or revoking a license." *Id.* An agency decision declining to renew a license does not have that effect.

To "revoke" is to "annul or make void by recalling or taking back, cancel, rescind, repeal, or reverse." Revoke, Black's Law Dictionary 1485 (4th ed. Revised 1968); *see* Revoke, Webster's Third New International Dictionary 1944 (1976) (defining revoke as "to bring or call back" or "to annul by recalling or taking back" or "an annulling or abrogating"). To "suspend" is "[t]o interrupt; to cause to cease for a time; to postpone; to stay, delay, or hinder; to discontinue temporarily, but with an expectation or purpose of resumption." Suspend, Black's Law Dictionary 1615 (4th ed. Revised 1968); *see* Suspend, Black's Law Dictionary (11th ed. 2019) ("To temporarily keep (a person) from performing a function, occupying an office, holding a job, or exercising a right or privilege."). In other words, to "revoke" is to "to annul by recalling or taking back" and to "suspend" is to do so "temporarily." In this context—revocation or suspension of a license—both actions "take back" a right or privilege that was originally granted. By contrast, denying a renewal application leaves the original grant intact, letting it expire per its original terms;

nothing is "tak[en] back."[3] To illustrate the point, a licensee whose renewal application is denied before its license expires may still operate until the license's original expiration date—nothing is lost.

The difference is of consequence. Unlike a denied renewal, a suspension or revocation almost always operates as a sanction or other disciplinary action.[4] Suspension and revocation are typically consequences of a rule violation and often entail collateral consequences—for example, they may prejudice the licensee's ability to obtain a new license in the future. A denied renewal rarely (if ever) carries such consequences.[5] Consistent with that difference, this

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[3] A standard license issued by AHCA expires two years after the date it is issued. § 408.808(1), Fla. Stat.

[4] *See Dep't of Banking & Fin., Div. of Sec. & Inv. Prot. v. Osborne Stern & Co.*, 670 So. 2d 932, 934 (Fla. 1996) ("The denial of registration pursuant to section 517.161(6)(a), Florida Statutes (1989), is not a sanction for the applicant's violation of the statute, but rather the application of a regulatory measure."); *Silver Show*, 763 So. 2d at 350 (holding that an agency's decision to deny a license application is regulatory in nature, not a sanction; thus, a denial of a license application is not equivalent to a license revocation for purposes of section 120.68(3)).

[5] As noted above, Section 408.806(3)(b) requires AHCA to deem incomplete and "withdraw" an application that is missing

Court has recognized that an agency's revocation decision must be supported by clear and convincing evidence, while a renewal decision need only be supported by competent, substantial evidence. *See, e.g.*, *Osborne Stern*, 670 So. 2d at 933; *see also* Init. Br. at 44–45. In providing for an automatic stay pending appeal of license revocations and suspensions, the statute speaks to instances in which the agency penalizes or sanctions a licensee—not to instances when the agency declines to renew an application because, for example, the applicant failed to provide complete information.

The court below recognized a "qualitative difference" between a renewal denial, which affects only a "license that has expired or is about to expire," and a suspension or revocation, which affects "an active license." *Ybor Med. Inj. & Accident Clinic, Inc. v. AHCA*, 310 So. 3d 1060, 1063 (Fla. 2d DCA 2020) (quotations omitted). Yet the court granted the stay because it concluded that an agency action "has the effect of suspending or revoking a license" if, as a result of the action, the licensee would not be able "to maintain its license and continue

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information. A withdrawn application, like the one at issue here, will never prejudice a licensee's ability to seek a new license in the future.

its operations." *Id.* at 1062. To get there, the court construed the statute as imposing a stay on agency actions "producing the same 'result' as" a revocation or suspension. *Id.*

That reasoning is flawed. To begin with, it is not true that a renewal denial "produc[es] the same 'result' as" a revocation or suspension. A denied renewal is generally not a penalty and likely leaves the licensee free to submit a new application. And when the agency denies a renewal application before the license expires by operation of law, the license remains in effect; a revocation or suspension, by contrast, cuts the license short. Statutory grace periods allow some licenses to remain in effect past their expiration date while a renewal application is pending, and a denial ends the grace period.[6] But in that case, the duration of the grace period was always tied to the pendency of the renewal application, so when the period ends along with the denial, nothing is "take[n] back." *See* Revoke, Black's Law Dictionary 1485 (4th ed. Revised 1968).

[6] *See* § 408.806(2)(a), Fla. Stat. ("If the renewal application and fee are received prior to the license expiration date, the license shall not be deemed to have expired if the license expiration date occurs during the agency's review of the renewal application.").

The court below erred in describing the automatic stay as triggered by anything that prevents the applicant from "maintain[ing] its license" and "continu[ing] its operations." *Ybor*, 310 So. 3d at 1062. Rather, the automatic stay provision is triggered by an "agency decision [that] has the effect of suspending or revoking a license." § 120.68(3), Fla. Stat. That is, agency decisions that curtail an existing license. If the applicant is unable to supply sufficient information to secure a license renewal, its license will expire, not as an effect of an agency suspension or revocation, but rather by automatic operation of law. The automatic stay simply does not apply there.

Moreover, the Second District's interpretation risks seriously damaging the efficient operation of the administrative scheme. *See Dep't of Envtl. Prot. v. ContractPoint Fla. Parks, LLC*, 986 So. 2d 1260, 1270 (Fla. 2008) ("We have long held that the Court should not interpret a statute in a manner resulting in unreasonable, harsh, or absurd consequences."). If left undisturbed, the ruling would give some licensees seeking renewal, especially those who suspect a possible denial, a strong incentive to provide less information to the

agency, rather than more, in the hopes of receiving a stay while the courts consider a challenge to the denial. It is no answer that the statute affords agencies the opportunity to make an affirmative showing that the licensee presents a "probable danger" if granted a stay. 120.68(3), Fla. Stat. An incomplete application would make it more difficult for agencies to make that showing, adding an extra hurdle to an already difficult task in renewal cases, which (unlike disciplinary suspensions and revocations) do not typically involve the development of an extensive evidentiary record. The lack of information would likely force agencies either to acquiesce in most stays, or to undertake a factual investigation to show dangerousness in each case, which is impracticable given limited agency resources.

For many licensees, a stay pending appeal is indeed the functional equivalent of an extension of the license duration. And the temptation for licensees to take advantage of an extension may prove too great, prompting licensees who would not otherwise have filed an appeal to do so. This is no small matter. While revocations and suspensions are relatively rare, renewal applications are quite numerous. For instance, in 2019, the Department of Health

processed more than 459,871 online renewals. Annual Report and Long-Range Plan at 28, http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/_documents/2019-2020-annual-report.pdf. By contrast, the Department revoked only 270 licenses and suspended just 366. *Id.* at 38. Accepting the Second District's interpretation would almost certainly result in a dramatic increase in the number of appeals challenging the denial of renewal applications.

Moreover, reversing the Second District's decision would not preclude stays pending appeal for applicants whose renewal applications were denied. Either the agency or the court may grant discretionary stays in appropriate cases. *See, e.g.*, Fla. R. App. P. 9.190(e)(2)(A) (allowing the lower court to grant a discretionary stay "upon appropriate terms" in an appeal of final agency action); Fla. R. App. P. 9.310 (allowing lower courts to grant discretionary stays in all cases). In the absence of an automatic stay, courts will grant stays when appellants are able to satisfy "proper grounds for issuance of the stay," which require a "showing of appellant's likelihood of prevailing on appeal, irreparable harm to movant if the motion is not

granted, or showing that a stay would be in the public interest." *White Const. Co., Inc. v. Dep't of Transp.*, 526 So. 2d 998, 999 (Fla. 1st DCA 1988). Properly interpreting the automatic stay provision in Section 120.68(3) to exclude denials of renewal applications would thus not affect the ability of renewal applicants to seek discretionary stays in appropriate cases.

CONCLUSION

For these reasons, the Court should disapprove the decision below and clarify that Section 120.68(3)'s automatic stay does not apply to the denial of renewal applications.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by electronic service through the Florida Courts E-Filing Portal on July 8, 2021 to the following counsel of record for the parties:

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CERTIFICATE OF FONT COMPLIANCE

I certify that the size and style of type used in this brief is 14-point Bookman Old Style, in compliance with Fla. R. App. P. 9.210(a)(2), and that the brief contains less than 5,000 words, in compliance with Fla. R. App. P. 9.370(b).

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