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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-2063**

In the Matter of the Professional Engineering License Application  
of Michael P. Opela, Sr.

**Filed July 2, 2012  
Affirmed  
Wright, Judge**

Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture,  
Geoscience and Interior Design  
File No. 48-1006-21480-2

Michael P. Opela, Sr., Stillwater, Minnesota (pro se relator)

Lori Swanson, Minnesota Attorney General, Christopher M. Kaisershot, Assistant Attorney  
General, St. Paul, Minnesota (for respondent)

Considered and decided by Wright, Presiding Judge; Ross, Judge; and Willis,  
Judge.\*

**UNPUBLISHED OPINION**

**WRIGHT**, Judge

Relator appeals an administrative decision denying his application for state licensure as a professional engineer. Relator argues that (1) respondent erred by determining that relator does not qualify for licensure by comity, (2) respondent administered a defective oral examination, (3) respondent erroneously denied relator's request to retake the oral examination, and (4) the record in this case should be sealed. We affirm.

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

## FACTS

Relator Michael P. Opela, Sr. graduated from Mankato State University in 1991 with a degree in accounting and in computer science. In 1994, Opela began working in the field of engineering in Arizona. He received his Arizona license as a structural engineer in 2004. To obtain his Arizona license, Opela passed three eight-hour written examinations: the National Council of Examiners for Engineering and Surveying (NCEES) Fundamentals of Engineering (FE) examination, the NCEES Structural I examination, and the NCEES Structural II examination.

In 2010, Opela applied for licensure by comity as a professional engineer in Minnesota. Respondent Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design (the board) advised Opela that he did not qualify to be licensed as a professional engineer in Minnesota. The board explained that Opela's education does not satisfy Minnesota's licensure requirements because his postsecondary degree is not an accredited engineering degree and he has not completed the required engineering-related coursework. Opela responded by letter contesting the board's determination.

The board advised Opela that it could administer an oral examination to evaluate his competence and qualifications. Opela requested from the board information as to the format and content of the oral examination as well as the passage rate and frequency with which it has been administered. The board provided the following: a list of topics that would be covered in the six-hour oral examination, including the number of questions to be asked for each topic, the score needed to pass, a morning and afternoon schedule, and the

identities of the engineers who would proctor and grade the examination. The board also advised Opela that, because the oral examination had not been given in the last ten years, the board could not provide a passage rate or any other statistics regarding the oral examination. Opela took the oral examination, which was prepared, proctored, and graded by two board members who are professional engineers licensed in Minnesota. Opela scored 43 percent on the oral examination, which is not sufficient to pass.

The board commenced an administrative action before an administrative law judge (ALJ) to permit Opela the opportunity to establish why his license application should be granted. The parties filed cross-motions for summary disposition. In his motion, Opela argued that he should be granted a license for several reasons: (1) he holds a valid Arizona license that was granted under stricter licensing requirements than those of Minnesota; (2) the Minnesota rules do not require an applicant to have an engineering degree in order to receive a license by comity; (3) the board has granted licenses by comity to engineers who are licensed in Arizona; and (4) the board acted in an arbitrary and capricious manner when it required him to take an oral examination that has not been required of other applicants. Opela also sought the opportunity to take the oral examination again. In addition, he requested to seal his application and the record of the administrative proceedings to protect his privacy and reputation.

The ALJ recommended that the board deny Opela's application because as a matter of law he lacks the educational background to be granted a license by comity as a professional engineer but permit Opela to apply to take the oral examination again. The ALJ denied Opela's request to seal the record because Opela did not identify any legal

authority for doing so. The board issued an order adopting the ALJ's recommendations. The board expressly denied Opela's application to be licensed as a professional engineer because "Arizona's requirements for licensure as a professional engineer are not equal to Minnesota's requirements for licensure as a professional engineer." The board ruled that Opela could not retake the oral examination in conjunction with his pending application but explained that he could submit a new application that would be processed under the applicable law. This certiorari appeal followed.

## D E C I S I O N

We review an administrative decision to determine whether it is the product of an unlawful procedure, affected by an error of law, unsupported by substantial evidence, or arbitrary or capricious. Minn. Stat. § 14.69 (2010). "Issues of fact and policy are for administrative and not judicial determination, but courts have the independent power to determine questions of law." *In re 1994 & 1995 Shoreline Improvement Contractor Licenses of Landview Landscaping, Inc.*, 546 N.W.2d 747, 749 (Minn. App. 1996), *review denied* (Minn. June 11, 1996). When reviewing an issue of statutory interpretation, we are not bound by the agency's determination. *Arvig Tel. Co. v. Nw. Bell Tel. Co.*, 270 N.W.2d 111, 114 (Minn. 1978). But we afford deference to an agency's interpretation of its rules when the language of the rules is technical, ambiguous, or the agency's interpretation is longstanding. *Minn. Ctr. for Env'tl. Advocacy v. Comm'r of Minn. Pollution Control Agency*, 696 N.W.2d 95, 100-01 (Minn. App. 2005).

## I.

Opela first challenges the board's determination that he does not qualify for licensure by comity, arguing that the board's decision reflects an error of law and is arbitrary or capricious. Under Minnesota law, the board shall issue an engineering license on application and payment of a prescribed fee:

(1) To any person over 25 years of age, who is of good moral character and repute, and who has the experience and educational qualifications which the board by rule may prescribe[;]

(2) To any person who holds an unexpired certificate of registration or license issued by proper authority in . . . any state or territory of the United States . . . in which *the requirements for registration or licensure of . . . engineers . . . , at the time of registration or licensure in the other jurisdiction, were equal, in the opinion of the board, to those fixed by the board and by the laws of this state*, and in which similar privileges are extended to the holders of certificates of registration or licensure issued by this state.

Minn. Stat. § 326.10, subd. 1(a) (2010) (emphasis added). To grant an engineering license to an applicant licensed in another jurisdiction, the board must conclude that Minnesota's requirements for engineering licensure "were equal" to the requirements of the other jurisdiction when the applicant was licensed in the other jurisdiction. *Id.*

The board found that Opela failed to meet this requirement. Opela is not entitled to licensure by comity as a professional engineer in Minnesota, the board concluded, because Arizona's licensing requirements in 2004—the year that Opela received his Arizona engineering license—were not equal to Minnesota's licensing requirements in 2004. Specifically, the board found that, "at all times since [Opela] became licensed as a professional engineer in Arizona in June of 2004, . . . *all* professional engineer license

applicants in Minnesota” have been required to possess sufficient engineering-science and design credits or a degree from an accredited engineering curriculum as provided by the Minnesota Rules.<sup>1</sup> (Emphasis added.)

When considering applications for licensure by comity, the board is given wide latitude to compare the requirements for licensure in Minnesota with the requirements for licensure in the jurisdiction where the applicant was originally licensed. *See* Minn. Stat. § 326.10, subd. 1(a)(2) (providing that “the opinion of the board” is the standard by which the board should make this determination). As such, it is within the broad discretion of the board to compare like methods of licensure in each jurisdiction when it considers an application for licensure by comity. Accordingly, the board’s comparison of the written-examination methods of licensure in Arizona and Minnesota was appropriate.

In 2004, the Minnesota Rules provided that passing a written examination is one of several methods by which an applicant may qualify for licensure as a professional engineer in Minnesota. Minn. R. 1800.0800 (2003). To qualify for admission to the written examinations in Minnesota, an applicant was required to possess sufficient engineering-science and design credits or a degree from an accredited engineering curriculum as

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<sup>1</sup> We observe that this finding is overbroad and not supported by the Minnesota Rules. Indeed, the Minnesota Rules in 2004 (and continuing through 2011) expressly provided that an applicant who passed an oral examination could receive a professional engineering license without holding a degree from an approved engineering curriculum. Minn. R. 1800.0800, .2600 (2003 & 2011). And the record demonstrates that the board expressly acknowledged in a March 2, 2010 memorandum that “[t]he way the rules are currently written provide[s] for individuals without a degree in an approved engineering curriculum to pursue licensure through the oral exam process.” We recognize, however, that an oral-examination method of licensure in Minnesota cannot readily be compared to the written-examination method of licensure by which Opela obtained his original license in Arizona.

provided by Minnesota Rule 1800.2500, subparts 2 and 2a(A) (2003). To obtain a professional engineering license in Minnesota through the written-examination method, an applicant not only was required to satisfy the engineering-curriculum prerequisites for admission to the written examination, but also was required to pass two eight-hour written examinations: the FE examination and a professional examination comprising the principles and practice of engineering in a major field of practice, such as Structural I and II. Minn. R. 1800.2700 (2003) (prescribing written-examination requirements).

Although rule 1800.0800 neither includes an express educational requirement nor refers to the educational prerequisites prescribed by rule 1800.2500, subparts 2 and 2a(A), when viewed as a whole, the regulatory scheme set forth in these rules demonstrates that the educational or degree requirements of rule 1800.2500, subparts 2 and 2a(A), are an essential element of the written-examination method of licensure prescribed in rule 1800.0800. Thus, the board's interpretation of the rules is reasonable and rests well within the board's discretion. *See Minn. Ctr. for Env'tl. Advocacy*, 696 N.W.2d at 100-01 (acknowledging that we generally defer to an agency's interpretation of its rules); *see also St. Otto's Home v. Minn. Dep't of Human Servs.*, 437 N.W.2d 35, 40 (Minn. 1989) (stating that an agency's interpretation of ambiguous regulation generally will be upheld if it is reasonable).

The record reflects, and the parties do not dispute, that Opela passed three eight-hour written examinations—the NCEES FE examination, the NCEES Structural I examination, and the NCEES Structural II examination—before obtaining his professional engineering license in Arizona in 2004. And the board has not questioned the substance of

those examinations. But unlike Minnesota, Arizona did not require an applicant to possess engineering-science and design credits or a degree from an accredited engineering curriculum before permitting the applicant to take these examinations in 2004. Ariz. Stat. § 32-122.01, subd. A(2) (2004); Ariz. Admin. Code §§ R4-30-201, R4-30-202, R4-30-204, R4-30-208 (2004).<sup>2</sup> The board acted within its broad discretion when it determined that Opela is not entitled to licensure by comity as a professional engineer in Minnesota because Arizona’s licensing requirements in 2004 were not equal to Minnesota’s licensing requirements in 2004. *See* Minn. Stat. § 326.10, subd. 1(a)(2) (providing that “the opinion of the board” is the standard by which the board should make this determination). Accordingly, Opela is not entitled to relief on this ground.<sup>3</sup>

## II.

Opela next argues that the oral examination administered to him by the board was not standardized and did not conform to the regulatory requirements. “An agency’s decision is arbitrary and capricious when it represents the agency’s will, rather than its judgment.” *In re Valley Branch Watershed Dist.*, 781 N.W.2d 417, 423 (Minn. App.

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<sup>2</sup> Opela also does not contend that he possessed in 2004, or now possesses, engineering-science and design credits or a degree from an accredited engineering curriculum.

<sup>3</sup> Opela also contends that the board’s decision is arbitrary or capricious because the board has granted licensure by comity to applicants from Arizona in the past. Minnesota law permits licensure by comity only if the board determines that the licensure requirements in each jurisdiction were equal at the time of licensure by the other state. *Id.* Because the board has concluded that Arizona’s licensing requirements in 2004 were not equal to Minnesota’s licensing requirements in 2004, it lacks the statutory discretion to grant licensure by comity to *any* applicant who was originally licensed in Arizona in 2004 via the written-examination method. But here, Opela relies on prior board decisions that involve applicants who were originally licensed in Arizona *before* 2004. The record does not demonstrate whether the licensing requirements in Arizona and Minnesota were equal before 2004. Accordingly, Opela has not established that the board’s decision is arbitrary or capricious on this ground.

2010). But an agency's interpretation of an ambiguous regulation generally will be upheld if its interpretation is reasonable. *St. Otto's Home*, 437 N.W.2d at 40.

The board has broad statutory discretion to “subject any applicant for licensure or certification to such examinations as may be deemed necessary to establish qualifications,” and “at least one member determining the qualifications must be licensed or certified in the same profession as that being evaluated.” Minn. Stat. § 326.10, subd. 2 (2010). “An applicant shall appear before the board for oral examination and shall submit two exhibits of engineering work the applicant has performed.” Minn. R. 1800.2600 (2009). The Minnesota Rules do not prescribe the format, length, or content of the oral examination, which lends ambiguity to certain aspects of rule 1800.2600. In 2010, rule 1800.2600 provided that the oral-examination method of licensure was available to an applicant who “does not hold a degree from an approved engineering curriculum.” *Id.*

The board argues, and the record reflects, that the oral examination was written, proctored, and graded by two professional engineers. The board provided Opela with advance notice as to topics that would be covered in the six-hour oral examination, including the number of questions to be asked for each topic and the score he must achieve to pass, a morning and afternoon schedule, and the identities of the two professional engineers who would author, proctor, and grade the examination. Opela identifies no specific defects in the questions or in the format of the oral examination. On this record, we conclude that the board reasonably interpreted the ambiguous aspects of regulations regarding oral examinations and did not abuse its discretion in preparing and administering Opela's oral examination.

Opela relies on Minn. Stat. § 214.03, subd. 1 (2010), which provides: “All state examining and licensing boards . . . shall use national standardized tests for the objective, nonpractical portion of any examination given to prospective licensees *to the extent that such national standardized tests are appropriate.*” (Emphasis added.) It is clear from the record that the examination administered to Opela was not standardized. Indeed, the record demonstrates, and the board acknowledges, that there are no nationally standardized oral examinations for licensure as a professional engineer and that the board designed the oral examination specifically for Opela. But determining whether a standardized examination is appropriate is within the board’s discretion. *See* Minn. Stat. § 214.03, subd. 1 (requiring standardized examination only “to the extent that such national standardized tests are appropriate”). Here, the rules provided for a nonstandardized oral examination only under limited circumstances. Minn. R. 1800.2600 (2009) (permitting oral examination of applicants who lack particular experience or a degree from an approved engineering curriculum, or who qualify for waiver of the FE examination). Moreover, we observe that a nonstandardized examination is not unfair per se. On the record before us, we conclude that the board acted within its statutory discretion to accommodate Opela’s unique circumstances by using a nonstandardized examination.

Opela also asserts that the board failed to follow its rules because he submitted two exhibits of engineering work that he has performed, but those exhibits were not given any weight in determining his score. An applicant taking an oral examination must submit two exhibits of engineering work that the applicant has performed. *Id.* Here, the board required Opela to submit two such exhibits and advised him that “[t]he oral exam will

include an inquiry into these two projects.” The oral examination did not address Opela’s exhibits, and the record does not demonstrate that the exhibits were given any weight in determining Opela’s final score. But the rules do not require the board to consider exhibits of the applicant’s engineering work when scoring an oral examination. *Id.* And the board advised Opela in advance of the examination that his score would be based on the number of questions he correctly answered. In light of the breadth of its discretion, the board did not abuse that discretion by declining to give weight to Opela’s exhibits of engineering work when scoring his oral examination.

In sum, the board did not abuse its discretion in preparing, administering, and scoring the oral examination. Opela, therefore, is not entitled to relief on this ground.

### III.

Opela also challenges the board’s decision that he cannot retake the oral examination unless he submits a new application. The rule that permits applicants for a professional engineering license to take an oral examination does not contain a provision regarding reexamination. *Id.* But the rules contain a general provision for reexamination, which provides: “An applicant who does not receive a passing grade in an examination *may make application* to retake that examination. The application shall be accompanied by a reexamination fee . . . .” Minn. R. 1800.0900, subp. 4 (2009) (emphasis added). The ALJ relied on this provision when it recommended that Opela is entitled to retake the oral examination “by applying to retake that examination and paying the required reexamination fee.” The board subsequently advised Opela that he could submit a new application that would be processed under the applicable law. Because the board’s

decision is consistent with rule 1800.0900, subpart 4, Opela is not entitled to relief on this ground.<sup>4</sup>

#### IV.

Relying on the Minnesota Government Data Practices Act (MGDPA), Minn. Stat. § 13.01-13.99 (2010), Opela also argues that the record of these proceedings should be sealed to protect his privacy and reputation. The ALJ denied this request, and the board did not address it.

The MGDPA provides, in relevant part, that “data, other than their names and designated addresses, submitted by applicants for licenses,” that are collected, created, or maintained by any licensing agency, are classified as private. Minn. Stat. § 13.41, subd. 2(a). Section 13.41 does not address the classification of application data when it is made part of the record in an action challenging the denial of a license application. *See* Minn. Stat. § 13.41. But the MGDPA provides: “The classification of data in the possession of an entity shall change if it is required to do so to comply with either judicial or administrative rules pertaining to the conduct of legal actions.” Minn. Stat. § 13.03, subd. 4.

Here, Opela’s application data were disseminated from the board to the ALJ. In hearings before an ALJ, “[a]ll evidence, including records and documents containing information classified by law as not public . . . shall be made a part of the hearing record of the case.” Minn. Stat. § 14.60, subd. 2 (2010). Whether to seal all or part of a record to

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<sup>4</sup> The board subsequently amended its rules, which currently do not permit an applicant to take an oral examination unless the applicant meets certain educational requirements. *See* Minn. R. 1800.2600, 1800.2800, Minnesota Office of the Revisor of Statutes, Minnesota Administrative Rule 1800.2600, <http://www.revisor.mn.gov/rules/?id=1800.2600> (posted Mar. 21, 2012) (forthcoming Minn. R. 1800.2600 (Supp. 2012)). This amendment, however, does not affect our conclusion because, at all times relevant to the decision that we review, rule 1800.0900, subpart 4, required an applicant who has not passed an examination to reapply to retake the examination.

protect nonpublic information is within the ALJ's discretion. *Id.* (providing that the ALJ “may . . . seal all or part of the hearing record” (emphasis added)). Here, the ALJ issued a protective order regarding some of the documents in the record, but was not required to seal the entire record. And we observe that, notwithstanding the ALJ's decision not to seal certain private information, the board continues to be bound by the confidentiality requirements of section 13.41. *See* Minn. Stat. § 13.03, subd. 4(d) (providing that the “classification provided for by law in the hands of the entity receiving the data does not affect the classification of the data in the hands of the entity that disseminates the data”).

Opela does not cite any other legal authority or advance any legal argument to support sealing the records of these proceedings. Case records on appeal are presumed public, absent several enumerated exceptions that are not applicable here. Minn. R. Pub. Access to Recs. of Jud. Branch 4, subd. 1 (providing that “[a]ll case records are accessible to the public” except in limited circumstances). A record may be sealed on appeal only in “extraordinary situations where material in the record is confidential,” and only after the moving party demonstrates “the need for sealing the information” and “set[s] forth the efforts made to maintain the confidentiality of the information before the motion was brought.” Minn. R. Civ. App. P. 112.01, subd. 2. Opela has not met this standard here. Although we have maintained the confidentiality of nonpublic data subject to the ALJ's protective order, we decline to seal any additional portion of the record on appeal.

In sum, we conclude that neither the ALJ nor the board abused its discretion by declining to seal the entire record of the administrative proceedings, and we decline to

expand the scope of the ALJ's protective order. Nonetheless, the board remains bound by the confidentiality requirements of the MGDPA.

**Affirmed.**