

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0969**

Tonia N. Williams,
Relator,

vs.

Minnesota Board of Nursing,
Respondent.

**Filed May 10, 2021
Affirmed
Gaïtas, Judge**

Minnesota Board of Nursing
File No. R15565-1 L542940

Tonia N. Williams, Brooklyn Park, Minnesota (self-represented relator)

Keith Ellison, Attorney General, Alex Mountain, Nicholas Lienesch, Assistant Attorneys
General, St. Paul, Minnesota (for respondent)

Considered and decided by Gaïtas, Presiding Judge; Larkin, Judge; and Cochran,
Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

In this certiorari appeal, relator Tonia N. Williams challenges a decision by respondent Minnesota Board of Nursing rescinding a stipulation and consent order and indefinitely suspending Williams's licenses to practice professional and practical nursing. Williams argues that (1) the board's decision is not supported by substantial evidence,

(2) the board's procedure violated her due-process rights, and (3) the suspension of her licenses violates her right to equal protection under the law. We affirm.

FACTS

For many years, Williams held licenses from the board to practice professional and practical nursing. In 2018, following Williams's convictions for three separate gross misdemeanor driving offenses involving alcohol and controlled substances, the board pursued disciplinary action against her. In February 2019, Williams and the board entered into a stipulation and consent order (consent order) that resolved the disciplinary action. In the consent order, signed by both parties, Williams acknowledged that her convictions subjected her to board discipline because the criminal conduct was reasonably related to the practice of nursing. Minn. Stat. § 148.261, subd. 1(3) (2020). She also agreed that her conduct demonstrated "actual or potential inability to practice nursing with reasonable skill and safety to patients by reason of illness, use of alcohol, drugs, chemicals, or any other material, or as a result of any mental or physical condition." *Id.*, subd. 1(9) (2020).

The consent order suspended Williams's nursing licenses but stayed the suspension and allowed Williams to continue practicing nursing so long as she complied with certain conditions. The conditions included that Williams participate in the Health Professionals Services Program (HPSP), a statutorily authorized monitoring agency, *see* Minn. Stat. § 214.31 (2020), and "successfully complete all terms of her HPSP Participation Agreement." It also required her to abstain from mood-altering substances, among other conditions. The parties agreed in the consent order that if Williams violated the conditions

of the stay, the board's review panel¹ could, upon probable cause, order removal of the stayed suspension and schedule a hearing before the board for a final determination. As to the hearing, the parties specifically agreed:

Prior to the hearing before the Board, the Review Panel and [Williams] may submit affidavits and written argument in support of their positions. At the hearing, the Review Panel and [Williams] may present oral argument. Argument will not refer to matters outside the record. The evidentiary record will be limited to the affidavits submitted prior to the hearing and this Stipulation and Consent Order. Unless stated otherwise in this Stipulation and Consent Order,[²] the Review Panel will have the burden of proving by a preponderance of the evidence that a violation has occurred. . . . [Williams] waives a hearing before an administrative law judge, discovery, cross-examination of adverse witnesses, and other procedures governing hearings pursuant to Minnesota Statutes chapter 14.

About five months after the parties entered the consent order, the review panel issued an order removing the stayed suspension, thereby suspending Williams's nursing licenses. In the order of removal, the review panel asserted that Williams had not complied with the terms of her HPSP participation agreement, specifically citing problematic toxicology screens, an arrest for felony DWI-test refusal in March 2019, failure to submit worksite monitor reports, and termination from employment. Williams met with the

¹ The board explains in its briefing that the review panel consists of two members—a board member and a nursing practice specialist employed by the board—and that the review panel's role is to “review, investigate, and prosecute disciplinary matters on behalf of the Board.”

² The consent order also provides that if the HPSP discharges Williams from the program for any reason besides successful completion, “there will be a presumption of a preponderance of the evidence that [she] failed to comply” with the consent-order conditions for staying the suspension.

review panel shortly thereafter, and, following the meeting, the board rescinded the order that removed the stayed suspension. The board reinstated the consent order, again providing Williams the chance to maintain her licensure so long as she complied with its terms, including monitoring by the HPSP.

Thereafter, from September 2019 to January 2020, the HPSP filed multiple reports with the board. The reports relayed that Williams had missed toxicology screenings on a few occasions, tested positive for opiates,³ and had another screening test positive for amphetamine, methamphetamine, and cannabis. In February 2020, the HPSP obtained an expert opinion from a toxicologist regarding the screening that tested positive for amphetamine, methamphetamine, and cannabis. Although Williams had a prescription for medical cannabis, the toxicologist relayed that none of her prescribed medications contained amphetamine or methamphetamine. He opined that a positive toxicology screen could only have resulted from ingestion or exposure to amphetamine and methamphetamine. A few days after the toxicologist provided his opinion, the HPSP reported to the board that Williams had been unsatisfactorily discharged from the program due to positive toxicology screening.

In April 2020, the review panel served Williams with a new order of removal of stay of suspension, again suspending her licenses, and also served her with a notice of suspension and of a hearing. The review panel alleged three grounds for discipline: (1) Williams failed to comply with the terms of her HPSP participation agreement in

³ Williams presented information suggesting that the positive opiates test resulted from a prescribed medication.

violation of the terms of the consent order and Minnesota Statutes section 148.261, subdivision 1(18) (requiring compliance with board orders); (2) Williams failed to abstain from all mood-altering substances in violation of the terms of the consent order and Minnesota Statutes section 148.261, subdivision 1(18); and (3) Williams was unsatisfactorily discharged from the HPSP pursuant to Minnesota Statutes section 214.355 (2020). To support its allegations, the review panel submitted an affidavit of the HPSP case manager assigned to Williams, with attached exhibits that included Williams's signed HPSP participation agreement, reports detailing Williams's missed toxicology screens, toxicology screening reports, and the letter from the toxicologist regarding the screen that was positive for amphetamine and methamphetamine.

Prior to the hearing, Williams submitted a response to the review panel's allegations and several of her own exhibits, including laboratory results indicating a negative April 10, 2019 Phosphatidyl ethanol (PEth) test, her prescription profile, information on medical marijuana, and a May 2020 chemical-use assessment.

In June 2020, the board held a hearing and heard arguments from Williams and the review panel. Williams asserted that she did not consume alcohol or use drugs other than those prescribed to her, that the HPSP had been difficult to work with, and that the positive toxicology screen must have been a "mix-up."

After the hearing, the board issued findings of fact, conclusions, and a final order that suspended Williams's licenses indefinitely. The board concluded that the preponderance of the evidence showed that Williams violated the terms of the consent order, and thereby violated Minnesota Statutes section 148.261, subdivision 1(18). The

final order suspends Williams’s licenses to practice practical and professional nursing for a minimum of twelve months, at which time she may petition for reinstatement.

Williams appeals.

DECISION

Appellate courts will reverse agency decisions “only when they reflect an error of law, the findings are arbitrary and capricious, or the findings are unsupported by substantial evidence.” *Cable Commc’ns Bd. v. Nor-W. Cable Commc’ns P’ship*, 356 N.W.2d 658, 668 (Minn. 1984). Ordinarily, agency decisions receive a presumption of correctness, and appellate courts defer to the agency’s expertise and special knowledge in its field. *In re Annandale NPDES/SDS Permit Issuance*, 731 N.W.2d 502, 514 (Minn. 2007); *N. States Power Co. v. Minn. Pub. Utils. Comm’n*, 344 N.W.2d 374, 377 (Minn. 1984). “The relator has the burden of proof when challenging an agency decision” *Minn. Ctr. for Env’tl. Advocacy v. Minn. Pollution Control Agency*, 660 N.W.2d 427, 433 (Minn. 2003).

The agency in this matter, the Board of Nursing, is authorized under the Minnesota Nurse Practice Act to license and regulate advanced practice registered nurses, registered nurses, and licensed practical nurses, and to take disciplinary action as appropriate. Minn. Stat. §§ 148.171-.285 (2020). The standard of proof for professional licensing proceedings is proof by a preponderance of the evidence. *In re License of Friedenson*, 574 N.W.2d 463, 466 (Minn. App. 1998), *review denied* (Minn. Apr. 30, 1998).

Williams argues that we should reverse the board’s order suspending her licenses indefinitely for several reasons. She argues that the board’s decision was not supported by substantial evidence, and she also asserts two constitutional challenges—that the board’s

procedure violated her substantive due-process rights and that the suspension of her licenses violates equal protection.⁴ We address each argument in turn.

I. The board’s final order suspending Williams’s licenses was supported by substantial evidence.

Williams first argues that the board’s decision to indefinitely suspend her licenses was not supported by substantial evidence.

“The substantial-evidence standard addresses the reasonableness of what the agency did on the basis of the evidence before it.” *In re Expulsion of A.D.*, 883 N.W.2d 251, 259 (Minn. 2016) (quotation omitted). Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Minneapolis Van & Warehouse Co. v. St. Paul Terminal Warehouse Co.*, 180 N.W.2d 175, 178 (Minn. 1970) (quotation omitted).

⁴ Williams also lists as separate issues at the beginning of her appellate brief that the board’s decision to terminate her licenses was “excessive,” and that the board improperly relied on her conviction for DWI-test refusal because, at the time of the board hearing, she was in the process of appealing that conviction.

As to the excessiveness issue, Williams does not provide any argument or briefing on this point. Her brief could be liberally construed to discuss excessive punishment only insofar as she suggests within her equal-protection challenge that the board treated her more harshly than other license holders. We generally decline to reach issues that are inadequately briefed, *Broehm v. Mayo Clinic Rochester*, 690 N.W.2d 721, 728 (Minn. 2005), as inadequately briefed issues are not properly before an appellate court, *Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982). We accordingly decline to analyze excessive punishment except to the extent that it is implicated in Williams’s equal-protection argument, discussed below.

As to the board’s reliance on Williams’s criminal conviction, that issue appropriately falls within Williams’s argument that the board’s decision was not supported by substantial evidence. We accordingly address it within our decision.

In examining whether an agency's decision is supported by substantial evidence, a reviewing court evaluates all of the evidence relied on by the agency, examining the record as a whole. *Cable Commc'ns Bd.*, 356 N.W.2d at 668. Appellate courts "defer to an agency's conclusions regarding conflicts in testimony, the weight given to expert testimony and the inferences to be drawn from testimony." *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001). The reviewing court must not substitute its judgment for that of the administrative body when its findings are properly supported by evidence. *See In re Denial of Eller Media Co.'s Applications for Outdoor Device Advert. Permits*, 664 N.W.2d 1, 7 (Minn. 2003). But a reviewing court will intervene if "there is a combination of danger signals which suggest the agency has not taken a hard look at the salient problems and the decision lacks articulated standards and reflective findings." *Cable Commc'ns Bd.*, 356 N.W.2d at 669 (quotations omitted).

Williams appears to argue that the board's decision was not supported by substantial evidence because she disputes the validity of the positive drug screens and the record does not establish a pattern of alcohol or drug use. Specifically, she points to a toxicology screen in January that was negative and suggests that it negates the screen that was positive for amphetamine and methamphetamine. She also argues that a few problematic, or diluted, toxicology screens do not show drug use.⁵

⁵ As previously noted, Williams also asserts that the board improperly relied on her conviction for DWI-test refusal because, at the time of her board hearing, she was challenging that conviction on appeal. She makes this assertion without providing any argument or authority as to how the board erred. An assignment of error in a brief based on "mere assertion" and not supported by argument or authority is waived "unless prejudicial error is obvious on mere inspection." *Schoepke v. Alexander Smith & Sons*

The board responds that it considered Williams's arguments that she had not used illicit drugs, but ultimately determined Williams "did not impugn the evidence presented by the [Review] Panel." Additionally, the board asserts that Williams's argument about the diluted toxicology screenings misses the mark because her licenses were actually suspended because she violated the consent order by missing toxicology screens, having a positive toxicology screen, and being discharged from the HPSP.

The review panel presented a significant amount of evidence to the board. It submitted a toxicology screening report showing that Williams's sample tested positive for amphetamine and methamphetamine. It also presented a toxicologist's opinion that the positive screening resulted from ingestion or exposure to amphetamine and methamphetamine. And it presented evidence that Williams failed to comply with HPSP requirements by missing screenings, and that she was unsatisfactorily discharged from the HPSP.

Williams, for her part, did not present evidence that effectively refuted these allegations; her explanation for the positive toxicology screen, for example, was that there must have been a "mix-up" with the samples. And while she presented evidence of one

Carpet Co., 187 N.W.2d 133, 135 (Minn. 1971). Here, we discern no error, let alone prejudicial error, by the board regarding the criminal conviction. Indeed, the board's order does not reflect that the DWI-test refusal conviction was an important factor in its decision to suspend Williams's licenses. Its decision to suspend Williams's licenses is specifically based on her failure to comply with the consent order by failing to successfully complete the HPSP and by failing to abstain from mood-altering substances. Accordingly, Williams has not demonstrated that she is entitled to relief in regards to any consideration of the DWI-test refusal conviction.

negative PEth test, she did not explain how it negated the positive toxicology screen for amphetamine and methamphetamine.

Ultimately, the board determined, after receiving evidence and hearing arguments from both sides, that Williams violated the consent order, which required her to abstain from mood-altering chemicals and successfully complete the HPSP. The board was in the superior position to weigh conflicting testimony and make credibility determinations; this court does not substitute its judgment for the board's when its findings are properly supported by the totality of the evidence. *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d at 278; *In re Denial of Eller Media Co.'s Applications for Outdoor Device Advert. Permits*, 664 N.W.2d at 7; *Cable Commc'ns Bd.*, 356 N.W.2d at 668. The board's conclusion is well-supported by the record, and by "such relevant evidence as a reasonable mind might accept as adequate." *Minneapolis Van & Warehouse Co.*, 180 N.W.2d at 178. Accordingly, giving proper deference to the board's findings, we conclude the decision to suspend Williams's licenses is supported by substantial evidence.

II. The board's hearing process and final order did not violate Williams's constitutional rights.

Williams next raises two constitutional challenges, arguing first, that the board's procedure violated her substantive due-process rights, and second, that the suspension of her licenses violates equal protection. We address each challenge in turn.

A. The board did not violate Williams's right to procedural due process.

The United States and Minnesota Constitutions prohibit the state from depriving any person of liberty or property without due process of law. *See* U.S. Const. amend. XIV;

Minn. Const. art. I, § 7. In examining a procedural-due-process challenge, courts first ask whether a protected liberty or property interest is at issue. *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 569-70, 92 S. Ct. 2701, 2705 (1972); *see also Humenansky v. Minn. Bd. of Med. Exam'rs*, 525 N.W.2d 559, 565 (Minn. App. 1994), *review denied* (Minn. Feb. 14, 1995). If such an interest is at issue, we then examine what process is constitutionally due. *See Mertins v. Comm'r of Nat. Res.*, 755 N.W.2d 329, 337 (Minn. App. 2008).

A license to practice nursing is a property right entitled to due-process protections. *See Greene v. McElroy*, 360 U.S. 474, 492, 79 S. Ct. 1400, 1411 (1959) (holding that the Due Process Clause protects the right to private employment in a chosen profession from unreasonable government interference); *Humenansky*, 525 N.W.2d at 566 (explaining that “[a] license to practice medicine is a property right deserving constitutional protection, including due process”). Health professionals are regulated pursuant to the state’s police power and do not have an “absolute” right to practice their profession. *Humenansky*, 525 N.W.2d at 566. Under Minnesota law, the Board of Nursing is authorized to deny, revoke, suspend, or otherwise limit a license for professional or practical nursing under enumerated circumstances. Minn. Stat. § 148.261.

Williams argues that she was denied procedural due process because she should have had an opportunity to cross-examine adverse witnesses and to call her own witnesses before the board indefinitely suspended her licenses. The board responds that Williams had no right to these due-process protections because she specifically waived them when she signed the consent order. We agree with the board.

Williams acknowledged when she signed the consent order that she had committed conduct that justified license suspension. She also agreed that the board could revoke the stay of suspension if she violated the consent-order conditions, and she agreed to the specific procedure outlined in the consent order for revoking the stay. The procedure identified in the consent order specifically excludes the opportunity to call her own witnesses and cross-examine adverse witnesses, which is the procedure that she now argues she should have been afforded.

Parties can waive due-process rights in civil proceedings. *Overmyer Co. v. Frick Co.*, 405 U.S. 174, 185, 92 S. Ct. 775, 782 (1972). Such a waiver, though, “must be voluntary, knowing, and intelligently made.” *Majestic Inc. v. Berry*, 593 N.W.2d 251, 255 (Minn. App. 1999), *review denied* (Minn. Aug. 18, 1999). Here, Williams waived her right to specific procedural safeguards by signing the consent order. She does not point to any evidence suggesting that her waiver was not voluntary, knowing, and intelligent. And the record reflects that, when she entered the consent order, she was represented by counsel.

Moreover, we note that the board afforded Williams a significant amount of procedural protection after her alleged violations of the consent order. After the review panel issued its first order removing the stay of suspension, it met with Williams to discuss the alleged violations. Following the meeting, the review panel rescinded the order and gave Williams another opportunity to maintain her licensure if she complied with the consent order. The second time that the review panel issued an order removing the stay of suspension, Williams received notice of hearing about two months before the hearing date. She also received details about the allegations, including the affidavit from the HPSP case

manager and the attached documents. Additionally, she had a meeting with the review panel about a month before the hearing. These were the procedures that she agreed to in the consent order.

Because Williams waived the procedural-due-process protections that she now argues should have been afforded and she has not shown that the waiver was invalid—and because the board followed the procedure that the parties agreed to in the consent order—we conclude that the board did not violate Williams’s constitutional procedural-due-process rights.

B. Williams has not shown that the board violated her right to equal protection.

The United States Constitution provides that “[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1; *see also* Minn. Const. art. I, § 2. The federal and state equal-protection clauses are “analyzed under the same principles.” *State v. Johnson*, 813 N.W.2d 1, 11 (Minn. 2012) (quotation omitted). Equal protection does not “forbid classifications,” but instead “keeps governmental decisionmakers from treating differently persons who are in all relevant aspects alike.” *Id.* at 12 (quoting *Nordlinger v. Hahn*, 505 U.S. 1, 10, 112 S. Ct. 2326, 2331 (1992)). Accordingly, “the threshold question in an equal protection claim is whether the claimant is treated differently from others to whom the claimant is similarly situated in all relevant respects.” *Id.*

Here, Williams claims that she was treated differently than similarly situated individuals when the board suspended her licenses for a minimum of twelve months. She asserts that she submitted a “data form request” and received the following response:

You requested ‘all public data for all nurses beginning January 1, 1999 – July 21, 2020 sanctioned for being removed from HPSP by suspension for 1 year or more for being accused of having a single positive drug screen for scheduled III due to exposure.’ The Board’s search has resulted in a null response.

The referenced form and response are not part of the appellate record, though. Appellate courts will not consider questions when the record is insufficient to support review. *See Noltimier v. Noltimier*, 157 N.W.2d 530, 531 (Minn. 1968); *see also Thorp Loan & Thrift Co. v. Morse*, 451 N.W.2d 361, 363 (Minn. App. 1990), *review denied* (Minn. Apr. 13, 1990) (“When an appellant acts as attorney pro se, appellate courts are disposed to disregard defects in the brief, but that does not relieve appellants of the necessity of providing an adequate record and preserving it in a way that will permit review.”) Because it appears that Williams’s equal-protection challenge is based solely on the data-request response that is not in the record, the record is insufficient for our review of that challenge. *See* Minn. R. Civ. App. P. 110.01 (“The documents filed in the trial court, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases”); Minn. R. Civ. App. P. 115.04, subd. 1 (stating that, on review by certiorari, the record is defined by Minn. R. Civ. App. P. 110 and “[e]ach reference in Rule[] 110 . . . to the trial court . . . shall be read, where appropriate, as a reference to the body whose decision is to be reviewed”).

Even if we were to consider the alleged data-request response, though, we note that the quote does not advance Williams’s position. It appears that she requested data on nurses who were “sanctioned for being removed from [the] HPSP,” but Williams herself was subjected to discipline for her failure to abide by the conditions of the consent order, despite repeated opportunities to comply. A “null” response to her request, without more, simply cannot establish dissimilar treatment of individuals who were “similarly situated in all relevant respects.” *Johnson*, 813 N.W.2d at 11. Williams accordingly has not shown the board violated her equal-protection rights.

Affirmed.