STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0148
A22-0273

In the Matter of the Administrative Penalty Order and License Suspension
Issued to Kevin McCulloch and Mission Tavern, Inc., d/b/a Mission Tavern (A22-0148),

In the Matter of the Administrative Penalty Order and License Suspension
Issued to Norman Sugden (A22-0273).

Filed September 19, 2022
Affirmed
Segal, Chief Judge

Office of Administrative Hearings

Richard Dahl, Dahl Law Firm PA, Brainerd, Minnesota (for relators Kevin McCulloch, Mission Tavern, Inc., and Norman Sugden)

Keith Ellison, Attorney General, Megan J. McKenzie, Lindsay K. Strauss, Assistant Attorneys General, St. Paul, Minnesota (for respondent Minnesota Department of Health)

Considered and decided by Smith, Tracy M., Presiding Judge; Segal, Chief Judge; and Smith, John, Judge.*

SYLLABUS

Section 144.99 of the Minnesota Health Enforcement Consolidation Act of 1993, Minn. Stat. §§ 144.989-.993 (2020), authorizes the Minnesota Department of Health to enforce against a licensee the applicable provisions of an emergency executive order duly promulgated under the Minnesota Emergency Management Act of 1996, Minn. Stat. §§ 12.01-.61 (2020).

---

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

OPINION

SEGAL, Chief Judge

Relators in these consolidated appeals challenge enforcement actions brought by respondent Minnesota Department of Health (MDH) for violating provisions of the governor's COVID-19-related emergency executive orders. Relators argue that MDH lacked statutory authority to enforce the governor's emergency executive orders; to utilize the contested case process provided in the Minnesota Administrative Procedure Act (MAPA), Minn. Stat. §§ 14.001-.69 (2020 & Supp. 2021); or to impose, after the orders were rescinded, license consequences and administrative penalties for violations that occurred while the orders were in effect. Relators also argue that MDH lacked authority for the enforcement actions because the emergency executive orders were not supported by a rational basis and were thus unconstitutional. Because we conclude that MDH acted within its statutory authority and that the emergency executive orders were supported by a rational basis, we affirm.

FACTS

Relators Kevin McCulloch and Mission Tavern, Inc. operate Mission Tavern in the town of Merrifield, and relator Norman Sugden operates Norm's Wayside in Buffalo. Both establishments have food and beverage licenses issued by MDH. During the COVID-19 pandemic, MDH received a number of complaints about the establishments and their lack of compliance with various COVID-19 emergency executive orders issued by the

governor.[1] Those executive orders prohibited restaurants and bars from serving food and beverages for on-premises consumption between mid-March 2020 and early June 2020. EEOs 20-04, 20-74. After a spike in COVID-19 case levels in the fall of 2021, on-premises consumption of food and beverages was also prohibited between mid-November 2021 and early January 2022. EEOs 20-99, 21-01. When allowed to reopen for on-premises consumption of food and drinks, restaurants and bars were required to restrict indoor occupancy and to implement a COVID-19-preparedness plan. EEOs 20-74, 21-01. Another order issued by the governor in July 2020 required face coverings to be worn indoors at restaurants and bars, with an exception allowing customers to remove them while eating and drinking. EEO 20-81. The face-coverings requirement remained in place until early summer 2021. (The applicable emergency executive orders are collectively referred to hereafter as "the executive orders.").

[1] In March 2020, the governor issued an order declaring a "peacetime emergency" in response to the COVID-19 pandemic. Emerg. Exec. Order No. 20-01, *Declaring a Peacetime Emergency & Coordinating Minnesota's Strategy to Protect Minnesotans from COVID-19* (Mar. 13, 2020) (EEO 20-01). Following this declaration, the governor issued a number of additional emergency executive orders to protect public health and slow the spread of COVID-19 during the pandemic. These included, at various times, orders requiring the closure of restaurants and bars for on-premises consumption of food and beverages and the wearing of face coverings. *See*, *e.g.*, Emerg. Exec. Order No. 20-04, *Providing for Temporary Closure of Bars, Restaurants, and Other Places of Public Accommodation* (Mar. 16, 2020) (EEO 20-04); Emerg. Exec. Order No. 20-74, *Continuing to Safely Reopen Minnesota's Economy and Ensure Safe Non-Work Activities during the COVID-19 Peacetime Emergency* (June 5, 2020) (EEO 20-74); Emerg. Exec. Order No. 20-99, *Implementing a Four Week Dial Back on Certain Activities to Slow the Spread of COVID-19* (Nov. 19, 2020) (EEO 20-99); Emerg. Exec. Order No. 21-01, *Protecting Recent Progress and Cautiously Resuming Certain Activities* (Jan. 7, 2021) (EEO 21-01); Emerg. Exec. Order No. 20-81, *Requiring Minnesotans to Wear a Face Covering in Certain Settings to Prevent the Spread of COVID-19* (July 22, 2020) (EEO 20-81).

In response to complaints received from the public, MDH staff inspected both establishments a number of times and found repeated violations of the executive orders, including instances of the establishments remaining open and serving customers indoors during the months when on-premises consumption was prohibited. MDH provided notice of the violations and issued cease-and-desist orders. Because the establishments continued to operate in violation of the executive orders, MDH suspended Mission Tavern's license, suspended and then revoked the license for Norm's Wayside, and assessed an administrative penalty in the amount of $10,000 against both establishments.

Relators contested MDH's enforcement actions. Separate contested case proceedings were held before an administrative-law judge (ALJ). Relators did not dispute the facts underlying the violations. Instead, they challenged the authority of MDH to enforce the executive orders and argued that the orders were unconstitutional because they lacked a rational basis.

MDH moved for summary disposition, and the ALJ recommended that MDH's motions be granted in both cases. In the Mission Tavern case, MDH's designated agency decision-maker determined that the ALJ's recommendation would "constitute the final agency decision," and returned the matter to the ALJ "for consideration of disciplinary action," including determination of the length of Mission Tavern's license suspension. In the final order, the ALJ found that Mission Tavern violated EEO 20-99; imposed a 40-day suspension of Mission Tavern's food and beverage license, with 20 days conditionally stayed for one year; and an administrative penalty of $7,500, with $2,500 conditionally stayed for one year.

In the Norm's Wayside case, MDH's designated agency decision-maker issued the final order. In that order, the agency decision-maker found that Sugden committed "knowing, intentional, serious, and repeated" violations of EEOs 20-74, 20-81, 20-99, and 21-01; revoked Sugden's food and beverage license but conditionally stayed the revocation; and affirmed a 60-day suspension of Sugden's food and beverage license, with 30 days conditionally stayed. The agency decision-maker also affirmed the $10,000 administrative penalty.

ISSUES

I. Does MDH have statutory authority to enforce the provisions of emergency executive orders?

II. Are the contested case provisions of MAPA applicable to MDH actions to enforce provisions of emergency executive orders?

III. Is MDH's authority to impose administrative penalties and license suspensions and revocations against licensees for violations of emergency executive orders extinguished by the rescission of those orders?

IV. Did the executive orders lack a rational basis?

ANALYSIS

Relators challenge the final orders in these consolidated appeals, arguing under various theories that MDH acted outside its authority and that the executive orders lacked a rational basis and were thus unconstitutional.[2] In our analysis, we first set out the statutory framework and standards of review and then address relators' arguments.

[2] Relators frame many of their arguments as challenges to MDH's "standing." "Standing is the requirement that a party has a sufficient stake in a justiciable controversy to seek relief from a court," and may be acquired by an "injury-in-fact" or a "legislative enactment granting standing." *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 493 (Minn.

Chapter 157 of the Minnesota Statutes requires food and beverage service establishments, like Mission Tavern and Norm's Wayside, to be licensed. Minn. Stat. § 157.16, subd. 1 (2020). The Minnesota Health Enforcement Consolidation Act of 1993 (HECA), Minn. Stat. §§ 144.989-.993, gives MDH its enforcement authority, including the authority to enforce the provisions of chapter 157. Minn. Stat. § 144.99, subd. 1.

HECA also authorizes MDH to enforce "all rules, orders, stipulation agreements, settlements, compliance agreements, licenses, registrations, certificates, and permits adopted or issued by the department or under any other law now in force or later enacted for the preservation of public health." *Id.* HECA provides MDH with several different enforcement mechanisms, including authority to issue correction, cease-and-desist, and administrative-penalty orders. *Id.*, subds. 3, 4, 6. And, in the case of "serious or repeated violations," the commissioner of health may also "suspend, place conditions on, or revoke a . . . license." *Id.*, subd. 9.

The enforcement actions taken by MDH here were premised on relators' violations of provisions in the executive orders promulgated under the authority of the Minnesota Emergency Management Act of 1996 (MEMA), Minn. Stat. §§ 12.01-.61. MEMA grants the governor the authority to declare a peacetime emergency, Minn. Stat. § 12.31, subd. 2(a), and to "make, amend, and rescind the necessary orders and rules to carry out the provisions" of MEMA, Minn. Stat. § 12.21, subd. 3(1). When the governor

---

1996). Although relators use the term "standing," their arguments do not implicate a standing challenge. We construe relators' arguments instead as a challenge to the scope of MDH's enforcement authority.

promulgates an order under Minn. Stat. § 12.21, subd. 3(1), and that order is "approved by the Executive Council and filed in the Office of the Secretary of State," the order has "the full force and effect of law." Minn. Stat. § 12.32. Relators do not dispute that the executive orders here were so approved and filed.

When MDH acts to suspend or revoke a license, or to impose an administrative penalty, HECA provides that a licensee has a right to request a contested case hearing. Minn. Stat. §§ 144.99, subd. 10, .991, subd. 5. Relators requested hearings here, and both cases were referred to an ALJ. As noted above, however, both cases were resolved on motions for summary disposition prior to a contested case hearing.

"Summary disposition is the administrative equivalent of summary judgment." *Pietsch v. Minn. Bd. of Chiropractic Exam'rs*, 683 N.W.2d 303, 306 (Minn. 2004). Appellate courts review a grant of summary disposition de novo to determine "whether there are any genuine issues of material fact and whether there was an error in applying the law to the facts." *Id.*

To the extent that relators' arguments require statutory interpretation, we first examine the statutory language to see if the statute is ambiguous or if only one reasonable interpretation exists. *Am. Fam. Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). "Where the legislature's intent is clearly discernable from plain and unambiguous language, . . . courts apply the statute's plain meaning." *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001). "The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16 (2020).

I. MDH's authority under HECA to enforce orders extends to duly promulgated emergency executive orders.

Relators' first challenge is to MDH's authority to enforce the executive orders. They argue that MDH's authority over its licensees does not extend to executive orders. HECA provides that the commissioner of health has the authority to enforce "all rules, orders, stipulation agreements, settlements, compliance agreements, licenses, registrations, certificates, and permits adopted or issued by the department or under any other law now in force or later enacted for the preservation of public health." Minn. Stat. § 144.99, subd. 1. Relators argue that the reference to "orders" in HECA, *id.*, includes only orders issued by a court and cannot be read as including executive orders. In support of their argument, they contend that the items listed in subdivision 1 of that section of HECA, such as stipulation agreements, settlements, and compliance agreements, all relate to court pleadings. Relators posit that the word "orders" should therefore be read as referring only to court orders.

Relators also point to Minn. Stat. § 4.035 (2020) as support for their argument. That section generally requires that an "order of the governor required by law to be in the form of an executive order, shall be uniform in format, . . . numbered consecutively, and . . . be effective and expire as provided in this section." Minn. Stat. § 4.035, subd. 1. It provides that "[a]n executive order issued . . . to protect a person from imminent threat to health and safety shall be effective immediately" and that "emergency executive orders shall be identified as such in the order." *Id.*, subd. 2. Relators argue that Minn. Stat. § 4.035 uses

the term "executive order" more times than it uses the term "order," and that this implies that the two terms have distinct meanings.

We reject relators' argument for three reasons. First, relators' argument asks us to add the word "court" to the statute to limit the otherwise broad grant of enforcement authority in HECA, Minn. Stat. § 144.99, subd. 1. Relators, however, do not argue that the statute is ambiguous. We, likewise, discern no ambiguity in this provision. And, in the absence of ambiguity, we cannot add words to a statute "under the guise of statutory interpretation." *328 Barry Ave., LLC v. Nolan Props. Grp., LLC*, 871 N.W.2d 745, 750 (Minn. 2015); *see also Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 604 (Minn. 2014).

Second, we fail to see the logic of relators' argument that the list of items refers only to court-pleading documents and that the word "order" must be read as meaning only a *court* order. The list of items that MDH may enforce under HECA includes items that are neither adopted nor issued by a court—rules, licenses, registrations, certificates, and permits. Minn. Stat. § 144.99, subd. 1. That list is further modified by the phrase "adopted or issued by the department or under any other law now in force or later enacted for the preservation of public health," thus contemplating that MDH—or another entity that is not a court—could be the entity to issue any of the listed items. *Id*. Nothing in the plain language of HECA supports relators' argument that "orders," unlike other listed items that MDH may enforce, is limited to *court* orders.

Third, the plain language of MEMA provides that "[o]rders and rules promulgated by the governor . . . have, during a . . . peacetime emergency, . . . the full force and effect of law." Minn. Stat. § 12.32. And HECA grants authority to MDH to enforce "orders . . .

adopted or issued by the department or *under any other law now in force or later enacted* for the preservation of public health." Minn. Stat. § 144.99, subd. 1 (emphasis added). As provided in MEMA, Minn. Stat. § 12.32, the executive orders here have "the full force and effect of law." And, because the executive orders were issued pursuant to a declared peacetime emergency with the purpose of responding to and protecting the public from the risks of the COVID-19 pandemic, they were "enacted for the preservation of public health." *Id.* We therefore conclude that HECA, Minn. Stat. § 144.99, subd. 1, authorizes MDH to enforce the executive orders.

Relators next argue that MDH is without authority because MEMA does not identify MDH as an "organization for emergency management." Relators argue that only emergency-management organizations have the authority to "execute and enforce orders and rules as may be made by the governor under authority of" MEMA, Minn. Stat. § 12.28. MDH's authority, however, arises under HECA, not MEMA. In addition, if we were to adopt relators' argument, it would have the result of, once again, requiring this court to add words to a statute. Section 12.28 states that "[e]very organization for emergency management established pursuant to this chapter . . . shall execute and enforce orders and rules as may be made by the governor under authority of this chapter." *Id.* It does not state that *only* those organizations may execute and enforce the governor's orders. And relators, once again, make no argument that this section is ambiguous, and we also discern no

ambiguity. We thus decline to add words to the statute to reach the interpretation urged by relators.[3] *See 328 Barry Ave.,* 871 N.W.2d at 750.

II. MAPA does not preclude contested case proceedings in an enforcement action under HECA.

Relying on an exemption in MAPA, relators argue that the ALJ lacked subject-matter jurisdiction to hold contested case proceedings in these cases. They then argue that, without the opportunity to challenge MDH's enforcement action through a contested case proceeding, their right to due process would be violated. The exemption relied on by relators is set out in Minn. Stat. § 14.03, subd. 1(b), of MAPA, which states that MAPA "does not apply to . . . emergency powers in [Minnesota Statutes] sections 12.31 to 12.37" of MEMA. Sections 12.31 to 12.37 of MEMA provide the governor with the authority to respond to emergencies.

MAPA, in addition to providing for contested case proceedings, contains detailed requirements and procedures for agency rulemaking. *See* Minn. Stat. §§ 14.05-.47. It thus makes logical sense to exempt emergency powers from MAPA's time-consuming procedures for rulemaking. This exemption, however, does not deprive an ALJ of subject-

[3] Relators also argue that the enforcement actions were improper because MEMA limits MDH to seeking quarantines, and not the suspension or revocation of licenses or administrative penalties. *See* Minn. Stat. § 12.39. We reject this argument for the same reason because, again, MDH's actions were taken pursuant to HECA, not MEMA. HECA, Minn. Stat. § 144.99, subds. 3, 4, 6, 9, provides for the very sanctions imposed against relators here. The fact that MDH was acting to enforce compliance with an emergency executive order does not alter that result. We also reject relators' argument that MDH violated their rights by failing to comply with the process for implementing a quarantine set out in Minn. Stat. §§ 144.419, .4195 (2020). MDH never imposed a quarantine against relators and the procedures required for imposing a quarantine are thus inapplicable.

matter jurisdiction to conduct contested case proceedings when it is otherwise authorized by law.

As we stated above, MDH's enforcement actions against relators were pursuant to MDH's authority under HECA, Minn. Stat. § 144.99, not MEMA. HECA provides that, when MDH acts to suspend or revoke a license, the licensee must be provided an opportunity to request a contested case proceeding under MAPA. Minn. Stat. § 144.99, subd. 10. Relators here made such a request, and MAPA provides that "[a]n agency shall initiate a contested case proceeding when one is required by law." Minn. Stat. § 14.57(a). We thus conclude that MDH properly initiated the contested case proceedings in response to relators' requests for hearings, and that the ALJ had subject-matter jurisdiction over both cases. *Cf. State by Malcolm v. Iron Waffle Coffee Co. LLC*, No. A21-0892, 2022 WL 589247, at *5-7 (Minn. App. Feb. 28, 2022) (reasoning that a contested case proceeding under MAPA was the exclusive means for the licensee to challenge a license revocation based on violations of an emergency executive order even though emergency powers under MEMA are exempt under MAPA; cited for its persuasive value), *rev. denied* (Minn. May 31, 2022).

III. MDH has the authority to impose administrative penalties and license suspensions and revocations as sanctions against relators for violations of emergency executive orders that occurred while the orders were in effect even though the orders have since been rescinded.

Relators argue that, because the executive orders have been rescinded and the peacetime emergency has ended, the executive orders no longer have the full force and effect of law. Relators maintain that MDH therefore cannot "continue the

suspension/revocation of [relators'] license[s]." This argument, however, conflicts with established principles of law.

First, it is expressly stated in MEMA that emergency executive orders have "the full force and effect of law." Minn. Stat. § 12.32. Second, it is established that we apply the principles of statutory interpretation when interpreting executive orders. *In re Murack*, 957 N.W.2d 124, 128 (Minn. App. 2021). Third, the statutory canons of construction require that we presume that a change in law does not apply retroactively absent a clear intent for it to do so. Minn. Stat. § 645.21 (2020). Fourth, those canons also provide that "[a]ny civil . . . proceeding pending to enforce any right under the authority of [a] law repealed shall and may be proceeded with and concluded under the laws in existence when the . . . proceeding was instituted, notwithstanding the repeal of such laws." Minn. Stat. § 645.35 (2020). We thus conclude that the rescission of the executive orders did not extinguish MDH's authority to penalize violations that occurred while the executive orders were in effect.[4]

Relators also assert that the amelioration doctrine—a common-law doctrine that addresses when a reduction of punishment for a criminal offense should apply to a pending case—should apply here. *See, e.g.*, *State v. Kirby*, 899 N.W.2d 485, 488 (Minn. 2017)

[4] Relators also argue that the ALJ lost subject-matter jurisdiction to conduct contested case proceedings in these cases when the executive orders were rescinded. We reject this argument for the same reason that we reject relators' argument concerning MDH. In addition, the case cited by relators in support of this argument, *Minn. Bd. of Chiropractic Exam'rs v. Cich*, 788 N.W.2d 515, 520 (Minn. App. 2010), is inapposite. In *Cich*, this court held that a district court erred by issuing an injunction beyond the scope of a state board's statutory authority. 788 N.W.2d at 520. As we have already concluded, however, MDH was acting within its statutory authority in the two enforcement actions here.

(describing the amelioration doctrine). In response, MDH asserts that "[t]he amelioration doctrine does not apply to civil proceedings." We need not decide, however, whether the amelioration doctrine could ever apply to a civil penalty because, even if it could, it would not be applicable here. The amelioration doctrine applies when a legislative amendment mitigates the *punishment* for an offense. *Id.* at 490. But in this case, rescission of the executive orders did not mitigate a punishment. It merely lifted the temporary COVID-19 restrictions and requirements imposed on establishments. Thus, even assuming the doctrine could be applied in a civil case, it would not apply here.

IV. The executive orders were supported by a rational basis.

Relators' final argument is that the grant of summary disposition was in error because relators provided sufficient evidence to demonstrate the existence of a genuine issue of material fact on their claim that the executive orders were unconstitutional because they lacked a rational basis. The constitutionality of executive orders is not a question of fact, however, but a question of law that we review de novo. *See Fletcher Props., Inc. v. City of Minneapolis*, 947 N.W.2d 1, 9 (Minn. 2020) (stating that the constitutionality of a statute is a question of law); *see also Murack*, 957 N.W.2d at 128 (stating that principles of statutory interpretation apply to the interpretation of emergency executive orders issued under MEMA).

Relators fail to demonstrate that the executive orders lack a rational basis. The rational-basis standard requires that a law serves a public purpose and is within the power of the governmental decision-maker to enact. *Fletcher Props.*, 947 N.W.2d at 10; *see also Boutin v. LaFleur*, 591 N.W.2d 711, 716, 718 (Minn. 1999). "The means chosen to achieve

the purpose are reasonable if the legislative body could rationally believe that the mechanism it chose would help achieve the legislative goal or mitigate the harm the legislation seeks to address." *Fletcher Props.*, 947 N.W.2d at 10; *see also Studor, Inc. v. State*, 781 N.W.2d 403, 410 (Minn. App. 2010) (stating that a law "will fail rational-basis review only when it rests on grounds irrelevant to the achievement of a plausible governmental objective" (quotation omitted)), *rev. denied* (Minn. July 20, 2010). The United States Supreme Court in *Jacobson v. Massachusetts*, 197 U.S. 11, 31 (1905), held that a state action to protect public health in an epidemic must be upheld unless it "has no real or substantial relation to those objects, or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law."[5]

Relators do not specify in their briefing which of the COVID-19 orders they are challenging. We note, however, that Mission Tavern was found to have violated EEO 20-99, and Norm's Wayside was found to have violated EEOs 20-74, 20-81, 20-99, and 21-01. All four of those orders were issued as part of the state's response to the COVID-19 pandemic and peacetime emergency declared in EEO 20-01. Relators do not dispute that responding to a public-health emergency is within the government's police powers. The United States Supreme Court has long recognized that "a community has the right to protect itself against an epidemic of disease which threatens the safety of its members."

[5] We note relators' suggestion that *Jacobson* sets out a more deferential standard of review than the rational-basis standard. We need not resolve whether that is the case, however, because we conclude that the emergency executive orders satisfy the rational-basis requirements both as articulated in *Jacobson* and as articulated by our supreme court.

Jacobson, 197 U.S. at 27. Here, as noted in EEO 20-81, "[the COVID-19 pandemic], an act of nature, endangers the lives of Minnesotans."

As the basis for their challenge, relators argue that they submitted sufficient evidence to undermine the alleged rational basis for the orders, particularly with regard to restrictions placed on restaurants and bars. Relators claim that, because MDH failed to submit expert evidence in support of the executive orders, the summary disposition must be reversed. We disagree.

First, contrary to relators' assertions, the burden of proof to demonstrate that the executive orders lacked a rational basis remained at all times on relators. *Fletcher Props.*, 947 N.W.2d at 11 (noting that, "on a rational basis review, the burden of proving that a [law] is invalid rests with the party challenging its constitutionality").

Second, the executive orders set out more than ample grounds to satisfy the rational-basis test. "The rational basis test merely requires the challenged [law] to be supported by any set of facts either known or which could reasonably be assumed." *Arcadia Dev. Corp. v. City of Bloomington*, 552 N.W.2d 281, 289 (Minn. App. 1996). "And the legislative body need not choose the best or most exact mechanism to achieve the purpose; it must merely choose a reasonable method." *Fletcher Props.*, 947 N.W.2d at 10. A law will not be found invalid "just because the chosen mechanism does not assure complete amelioration of the evil it addresses." *Id.* (quotation omitted).

Here, for example, the governor's initial declaration of a peacetime emergency noted in its preamble that the secretary of the U.S. Department of Health and Human Services had declared a national public health emergency due to the COVID-19 outbreak.

EEO 20-01. And when the governor issued EEO 20-74, the preamble noted that the President of the United States had also declared a national emergency due to COVID-19. EEO 20-74 also referenced the rapid spread of the disease and explained that "certain establishments—including those in which people gather and linger, those with communal facilities, and those in which close physical contact is expected—continue to pose a public health risk." As another example, EEO 20-99 stated that "Minnesota's rate of 'community spread' [of COVID-19] . . . is particularly concerning," and that within the previous week, "MDH ha[d] confirmed over 30 additional outbreaks connected to the gatherings, bars, and restaurants that were encompassed [in a recent executive order]," meaning that "restrictions on certain businesses are necessary." And EEO 21-01 noted that "science, data, and experience also show that the late-night bar and restaurant hours are particularly risky for patrons."[6]

By contrast, in support of their challenge to the executive orders, relators submitted an affidavit from a family physician stating the physician's belief that MDH overstated the number of deaths from COVID-19, that "COVID-19 may have a similar fatality rate to influenza," and that an "effective treatment[]" for COVID-19, hydroxychloroquine, was available. Relators' evidence fails to demonstrate that the executive orders lack a rational basis. *See Fletcher Props.*, 947 N.W.2d at 10.

[6] In this regard, we note that, in November 2020, MDH identified a COVID-19 outbreak associated specifically with Mission Tavern.

DECISION

We conclude that MDH had statutory authority to enforce the executive orders under HECA and that relators failed to demonstrate that the executive orders lacked a rational basis. We therefore affirm.

Affirmed.