2014 IL App (1st) 130822-U

FOURTH Division
September 18, 2014

No. 1-13-0822

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

KRISTINA LEE and LARRY CHOW, Plaintiffs-Appellants, v. ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION, DIVISION OF PROFESSIONAL REGULATION; DONALD W. SEASOCK, in his official capacity as Acting Director of the Division of Professional Regulation; and BRENT E. ADAMS, in his official capacity as Secretary of the Illinois Department of Financial and Professional Regulation, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County, Illinois. No. 11 L 50278 Honorable Rita M. Novak, Judge Presiding.

JUSTICE TAYLOR delivered the judgment of the court.
Justices Gordon and McBride concurred in the judgment.

ORDER

¶ 1 *Held*: Cease and desist orders against the owners of a business that performed teeth cleanings on animals without a veterinary license were not rendered void by the failure of the Illinois Department of Financial and Professional Regulation to consult with the

Veterinary Licensing and Disciplinary Board because the statutory requirement to do so is directive. Further, determinations that plaintiffs were not exempt from the prohibition against the unlicensed practice of veterinary medicine was not clearly erroneous where they diagnosed diseases, and the agency was not required to hold an evidentiary hearing to comply with due process because plaintiffs suffered no prejudice.

¶ 2 Plaintiffs Kristina Lee and Larry Chow appeal from an order of the circuit court of Cook County, which affirmed the administrative decision of the Director of the Division of Professional Regulation of the Illinois Department of Financial and Professional Regulation (Department) to enter an order against plaintiffs to cease and desist the unlicensed practice of veterinary medicine. They contend that the circuit court erred in affirming that order because: (1) the Department failed to consult with the Veterinary Licensing and Disciplinary Board before issuing the cease and desist order; (2) they fell into the "owner's agent" exception to the requirement of licensure; (3) the statute on which the order was based was void for vagueness; and (4) their constitutional right to due process was violated when: (a) they were denied an impartial hearing before the Department, and (b) the circuit court judge placed on plaintiffs the burden of proving that they were not engaging in unauthorized veterinary practice.

¶ 3 BACKGROUND

¶ 4 It is undisputed that plaintiffs, who are not licensed veterinarians, formed a business in 2009 called Paws 'n Claws Dental, LLC, which offered in-home teeth cleaning services for pets. Those cleanings were performed by Lee or Chow, using techniques that did not require anesthesia. Plaintiffs used a hand scaler to clean the front of the animals' teeth, but did not touch the back or sides of the teeth and did not go below the gum line. After each cleaning, plaintiffs would write their observations to the client and recommend non-prescription products to reduce tartar buildup. Plaintiffs advertised their services on the business' website, which stated as follows:

"Pet dentistry has become an established aspect of good veterinary care. One of the best things a pet owner can do to insure [sic] the overall health of their [sic] pet is to have a routine checkup of the teeth, gums and oral cavity.

"Comprehensive dental cleanings are recommended for pets as often as they are for people. Consider our services between these thorough veterinary procedures. Our technique is just a gentle approach to the traditional method of having to place your cat or dog under anesthesia."

¶ 5 In addressing the reasons why a pet owner may opt for of a cleaning without anesthesia, the website stated, under the caption "[i]s [a]nesthesia-[f]ree an [o]ption?":

"Perhaps you have a pet that has not responded well to anesthesia in the past. Or maybe you have an older pet that you would prefer not to place under the stress of anesthesia. Sometimes, certain breeds (such as [b]oston [t]erriers, [p]ugs, [b]ulldogs, [p]ersian and [h]imalayan cats, etc) have breathing issues that are more complex than breeds with a more conventional face and throat structure. Anesthetic risk can potentially be higher than usual for these brachycephalic breeds."

¶ 6 According to Chow's biography, also contained on that website, he had "worked as a [s]enior [v]eterinary technician at the Miami Beach Animal Hospital," and was later employed at Blum Animal Hospital in Chicago. Lee's biography states that, after a chance encounter with alternative therapies for pets, she "embarked on an extensive training course in the anesthesia-free methodology, apprenticing in Los Angeles." With respect to their formal education, however, it appears undisputed that Chow's only degree is in anthropology, and that Lee's degrees are in public health and music.

¶ 7 On January 10, 2011, the Department issued to plaintiffs two rules to show cause why orders to cease and desist the unlicensed practice of veterinary medicine should not be entered against them.

According to the Department, plaintiffs had violated the Veterinary Medicine and Surgery Practice Act of 2004 (Act) by performing teeth cleaning and pet dentistry through Paws 'n Claws while not licensed as veterinarians. The Department further alleged that plaintiffs had been representing themselves to be qualified to practice as veterinarians, even though they were not licensed.

¶ 8 In their response, plaintiffs admitted that they are not licensed veterinarians, but argued that their practices fell within an exemption of the Act for treatment provided by an animal's owners and agents of owners because they do not hold themselves out as veterinarians and inform their clients about the nature of their services. Plaintiffs explained that they notify their clients, before a service is rendered, that they are not veterinarians, do not practice veterinarian procedures, and that their services do not substitute for a comprehensive cleaning done by a licensed veterinarian. According to plaintiffs, they require clients to sign a waiver, in which they acknowledge the above information, as well as their claim that their services are "merely cosmetic." They further alleged that they advise clients to consult with a veterinarian for "larger problems" or deeper cleanings. While plaintiffs acknowledged that the exemption does not apply to diagnosis, prescribing drugs or surgery, they denied engaging in those activities. Instead, plaintiffs stated that their services do not consist of diagnosis, prognosis or deep cleaning, and do not require any "specialized veterinary or medical equipment" or any prescriptions.

¶ 9 On February 9, 2011, the Department's director entered cease and desist orders against both plaintiffs, finding that they had violated the Act by performing animal dentistry and engaging in the unlicensed practice of veterinary medicine and/or surgery. Plaintiffs filed an administrative review action against the Department on March 16, 2011, in which they argued that the cease and desist orders were contrary to the law, against the manifest weight of the evidence, and violated their rights to due process and equal protection. They again maintained that their services fell into an exemption of the Act

for treatment by an owner or an owner's agent, and explained that the Department violated their right to due process by failing to hold an evidentiary hearing prior to issuing the orders.

¶ 10 Following a hearing on January 5, 2012, the circuit court remanded the matter back to the Department for the taking of additional evidence. In doing so, the court found that the record did not contain sufficient substantive evidence for a meaningful review of the Department's decision. The court noted that the plaintiffs explained what they do not do, but never stated what it is that they do, and the orders did not provide any guidance to the court as to why the Department found that plaintiffs violated the Act. It further noted that in an administrative proceeding such as this, where an agency issues a rule to show cause to parties to provide information that shows that they were not conducting veterinary services in violation of the Act, plaintiffs had the burden to provide that information. The court reasoned that aside from plaintiffs' advertisement, the Department had no means of investigating the nature of their activity, and it was the plaintiffs who held all the relevant information.

¶ 11 On remand to the Department, plaintiffs filed a document titled "response to information request," in which they admitted that they are not licensed veterinarians, but explained that they both received "on-the-job" training on non-surgical and non-anesthetic teeth cleaning techniques. Plaintiffs first state that Chow received a certification as a veterinarian technician in 2011, but later explained that he was not actually certified and was "grandfathered" as veterinarian technician because the State of Florida, where he once held a position as a veterinarian technician, does not require any certifications for that position. Thus, according to plaintiffs, Chow was not bound by the rules and regulations of the Veterinary Board of Illinois (Board).

¶ 12 In describing their services, plaintiffs stated that they first scan the animal's mouth to determine its suitability for the cleaning, swab its mouth with a non-prescription substance to reduce the amount of bacteria, then proceed to use a hand scaler to remove tartar from the outside surface of the tooth. At the

end, plaintiffs apply a non-prescription polish, then write down their findings to the client and recommend other non-prescription products that may help reduce tartar buildup. As they had previously stated in their initial response, plaintiffs again noted that they inform their clients that they are not veterinarians and do not practice veterinarian procedures, such that their techniques are purely cosmetic and do not substitute for a comprehensive cleaning.

¶ 13 Attached to that document was a waiver of release, which plaintiffs' clients sign prior to their pets receiving plaintiffs' services. As plaintiffs claimed, the waiver stated that the procedure was not a substitute, but an "alternative" option for pets, and that plaintiffs were not veterinarians and do not claim to have any knowledge of veterinary medicine. The waiver also states that "[a]ny conditions or abnormalities found during the service[s] will be noted." Also attached were documents titled "report cards" for a dog and for a cat, both of which contained a list of choices so that one could indicate the amount of tartar buildup, the condition of the animal's gum line, and general appearance and structure of the animal's teeth. In that form, it could be indicated whether an animal's gum line was healthy, red, inflamed, bleeding or recessed. The form noted that an inflamed gum is indicative of serious gingivitis with slight erosion, and that bleeding gums indicated severe gingivitis and periodontal disease. In that form, it would also be noted whether the animal's teeth were healthy, chipped, loose, worn down, stained, missing, and whether they observed any "pockets," neck lesion or exposed nerve.

¶ 14 Following plaintiff's response, the Department entered another cease and desist letter against them, in which it determined that plaintiffs practiced veterinary medicine when they performed teeth cleanings and diagnosed dental disease. In doing so, the Department found that plaintiffs "diagnose any dental issues regarding follow-up care, identify healthy and unhealthy aspects of the animal's oral cavity and recommend products that may help reduce tartar buildup in the future." The order further stated that the report cards "also provide areas for [plaintiffs] to provide veterinary advice and diagnoses to their

clients." The Department rejected plaintiffs' claim that their services were merely cosmetic, noting that those cleanings were advertised and performed to treat dental disease and to prevent tartar buildup and gingivitis. It further noted that plaintiffs' services went well beyond the kind of tooth brushing performed by owners and groomers, using metal scrapers and polishing the teeth. In addition, the Department determined that plaintiffs represented themselves as engaging in the practice of veterinary medicine, since Chow described himself as a senior veterinary technician, even though he lacks certification, and Lee's claim that she participated in an extensive training course in anesthetic-free cleaning could cause people to believe that she was qualified to practice veterinary medicine. The Department also found that plaintiffs did not fall within the exemption of the Act for owners' agents because plaintiffs were not acting in the place of the animal's owners, and because the exemption does not apply to the diagnosis of dental diseases.

¶ 15 Plaintiffs filed a second administrative review action at the circuit court, in which they argued that the Department violated the Act by failing to state in its cease and desist order that it consulted with the Board before entering the order against them, and that the Act was unconstitutionally vague because it does not define "treatment" or "surgery" as they relate to the exemption for an owner or an owner's agent. They further argued that the Department's determinations were clearly erroneous.

¶ 16 On February 13, 2013, the circuit court affirmed the Department's cease and desist order, finding that the Act does not require the Department to consult with the Board before entering a cease and desist order, and that the Act was not unconstitutionally vague as applied to businesses like plaintiffs' because it was clear that, in diagnosing and treating the animals, plaintiffs fell outside the exemption. Further, the court found that the Department's finding that plaintiffs violated the Act were not clearly erroneous, and noted that plaintiffs' description of Chow on their website as a veterinary technician had the effect of assuring consumers that he had specialized knowledge.

¶ 17 ANALYSIS

¶ 18 On appeal from that decision, plaintiffs again contend, as they did at the circuit court, that the cease and desist order against them is void because the Department failed to consult with the Board prior to issuing the order as required under section 6(c) of the Act. While this argument was rejected by the circuit court, we note that, on appeal from an administrative review action, this court reviews the decision of the Department, not of the circuit court. *Czajka v. Department of Employment Security*, 387 Ill. App. 3d 168, 172 (2008).

¶ 19 Plaintiffs maintain that since neither of the cease and desist orders entered against them indicated that the Department had consulted with the Board as required by section 6(c), the Department exceeded the scope of its authority by entering the orders against plaintiffs without first ascertaining the Board's opinion. The Department responds that the requirement to solicit the Board's advice before enforcing the Act is merely directive, rather than mandatory, such that any alleged failure to consult with the Board before entering the cease and desist orders against plaintiffs does not render those orders void.

¶ 20 Although plaintiff correctly notes that section 6(c) of the pertinent version of the Act requires the Department to solicit advice from the Board before taking actions to enforce any provisions of the Act, the issue at hand is the consequences of the Department's failure to do so. That section provides that "[t]he Department shall solicit the advice and expert knowledge of the Board on any matter relating to the administration and enforcement of this Act." 225 ILCS 115/6(c) (West 2012).

¶ 21 "Whether a statutory command is mandatory or directory is a question of statutory construction, which we review *de novo*." *People v. Robinson*, 217 Ill. 2d 43, 54 (2005). However, while this court is not bound by an agency's interpretation of a statute, we may accord certain deference to the agency's interpretation of its enabling statute, as we recognize that the agency is in a good position to make a

good judgment on the issues related to the statute that it is charged to enforce. *Ikpoh v. Department of Professional Regulation*, 338 Ill. App. 3d 918, 924 (2003).

¶ 22 The cardinal rule of statutory interpretation is that a court is to ascertain and give effect to the legislative intent, the best indication of which is the plain language of the statute. *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 91 (1992). It is well established that the best evidence of the legislative intent is the language of a statute, and when possible, the court should interpret that language according to its plain and ordinary meaning. *In re Donald A.G.*, 221 Ill. 2d 234, 246 (2006). We evaluate the statute as a whole, considering each provision in connection with every other section. *Yang v. City of Chicago*, 195 Ill. 2d 96, 103 (2001).

¶ 23 As this court has held, "a mandatory provision and a directory provision are both couched in obligatory language, but they differ in that noncompliance with a mandatory provision vitiates the governmental action, whereas noncompliance with a directory provision has no such effect." *People v. Four Thousand Eight Hundred and Fifty Dollars ($4,850) United States Currency*, 2011 IL App (4th) 100528, ¶ 24. Thus, the classification of a statute as mandatory or directory " 'simply denotes whether the failure to comply with a particular procedural step will or will not have the effect of invalidating the governmental action to which the procedural requirement relates.' " *Robinson*, 117 Ill. 2d at 51-52 (quoting *Morris v. County of Marin*, 18 Cal.3d 901 (1977)). As such, the word "shall" is not determinative when the mandatory-directory dichotomy is at issue. *Robinson*, 117 Ill. 2d at 54. Instead, in determining whether a statute is mandatory or directory, we must ascertain whether it was the intent of the legislature to dictate a consequence for noncompliance. *In re M.I.*, 2011 IL App (1st) 100865, ¶47. " 'In the absence of such intent the statute is directory and no particular consequence flows from noncompliance.' " *Id.* (quoting *People v. Delvillar*, 235 Ill. 2d 507, 515 (2009).

¶ 24 Our supreme court has explained that "we presume that language issuing a procedural command to a government official indicates an intent that the statute is directory." *Delvillar*, 235 Ill. 2d at 517. However, that presumption may be rebutted when: (1) "there is negative language prohibiting further action in the case of noncompliance;" or (2) "the right the provision is designed to protect would generally be injured under a directory reading." *Id.*; see also *Robinson*, 117 Ill. 2d at 58 (statute requiring dismissal orders in post-conviction proceedings to be served within 10 days was directory where a violation of that requirement was unlikely to prejudice defendant's right to appeal); *In re M.I.*, 2011 IL App (1st) 100865, ¶52 (requirement that the trial court conduct a hearing within 30 or 60 days of State's filing a motion to designate a proceeding an extended juvenile prosecution was directory where the result of the proceeding would not have been different if it had been held on time); c.f. *Four Thousand Eight Hundred and Fifty Dollars ($4,850) United States Currency*, 2011 IL App (4th) 100528, ¶ 24 (deadline for the State's Attorney's office to file a forfeiture claim was mandatory because the purpose of that provision was to mitigate the harsh effect of seizing property without a hearing).

¶ 25 Plaintiffs argue that the second condition is fulfilled in this case because the provision in question was designed to protect their right to operate their business, which does not fall within the Department's regulation. According to plaintiffs, the requirement that the Department must consult with the Board before enforcing any of the Act's provisions was intended to add an "element of professional expertise" to decisions such as this, where the Department must determine whether plaintiffs' services consist of veterinary medicine. In support of that argument, plaintiffs note that 6 out of the 7 members that compose the Board must be licensed veterinarians. See 255 ILCS 115/7 (West 2012).

¶ 26 We disagree. The purpose of the Act is to "promote the public health, safety, and welfare by ensuring the delivery of competent veterinary medical care" through regulation of veterinary practice. 225 ILCS 115/1 (West 2012). In fact, section 7 of the Act, which governs the Board's duties, states that

the Secretary of Financial and Professional Regulation must "consider the advice and recommendations of the Board on questions involving standards of professional conduct, discipline and qualifications of candidates and licensees under this Act." In light of the purpose of the Act as a whole, as well as the provision is section 7, which describes the types of issues which require the specialized advice that the Board can provide, we conclude that the requirement in section 6(c) of the Act was not intended to protect the right of unlicensed individuals to engage in practices which may be construed as veterinary medicine. Accordingly, the requirement that the Department consult with the Board before enforcing the provisions of the Act is directory, at least insofar as it relates to entering a cease and desist order against an unlicensed individual engaged in the practice of veterinary medicine. Thus, the Department's alleged failure to consult with the Board does not warrant reversal.

¶ 27 Plaintiffs next contend, alternatively, that even if the cease and desist order is not invalidated on its face, it should nevertheless be reversed because the Department's determination that plaintiffs engaged in the unlicensed practice of veterinary medicine was clearly erroneous. They maintain that the information that they provided to the Department shows that their business activities fell within the exemption for owners and owner's agents, such that they did not require a veterinary license to provide those services.

¶ 28 The Act defines the "[p]ractice of veterinary medicine," in pertinent part, as follows:

> "[T]o diagnose, prognose, treat, correct, change, alleviate, or prevent animal disease, illness, pain, deformity, defect, injury, or other physical, dental, or mental conditions by any method or mode; including the performance of one or more of the following:
>
> (1) Prescribing, dispensing, administering, applying, or ordering the administration of any drug, medicine, biologic, apparatus, anesthetic, or other therapeutic or diagnostic substance, or medical or surgical technique. ***

(3) Performing upon an animal a surgical or dental operation. ***

(5) Determining the health and fitness of an animal.

(6) Representing oneself, directly or indirectly, as engaging in the practice of veterinary medicine.

(7) Using any word, letters, or title under such circumstances as to induce the belief that the person using them is qualified to engage in the practice of veterinary medicine or any of its branches. Such use shall be prima facie evidence of the intention to represent oneself as engaging in the practice of veterinary medicine." 255 ILCS 115/3 (West 2012).

¶ 29 The Department's director determined that plaintiffs' business activities fell within the definition of the practice of veterinary medicine pursuant to the above sections of the Act. Plaintiffs dispute any claims that they represent themselves as practicing veterinary medicine, or as qualified to do so, and claim that even if their services fall within one of the other definitions of veterinary medicine, they are nevertheless exempt as agents of pet owners. The issue of whether plaintiffs' services consist of the practice of veterinary medicine and, if so, whether they fall within the exemption for owner's agent presents a mixed question of law and fact, and the Department's decision will not be reversed absent showing that it was clearly erroneous. *Czajka*, 387 Ill. App. 3d at 173. A decision is clearly erroneous where the reviewing court, after examining the record, "is left with a definite and firm conviction that a mistake has been committed." *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 393 (2001).

¶ 30 While section 5 of the Act expressly prohibits any person from practicing veterinary medicine without a valid license (225 ILCS 115/5 (West 2012)), section 4(8) provides an exemption to:

"An owner of an animal, or an agent of the owner acting with the owner's approval, in caring for, training, or treating an animal belonging to the owner, so long as the individual or agent

> does not represent himself or herself as a veterinarian or use any title associated with the practice of veterinary medicine or surgery or diagnose, prescribe drugs, or perform surgery. The agent shall provide the owner with a written statement summarizing the nature of the services provided and obtain a signed acknowledgement from the owner that they accept the services provided." 225 ILCS 115/4(8) (West 2012).

¶ 31 The Department found, and again contends, that plaintiffs' services do not fall within this exemption because: (1) plaintiffs did not act as agents of the owners in the legal sense, since they provide services in exchange for payment; (2) Chow's title of veterinary technician is associated with the practice of veterinary medicine; and (3) plaintiffs diagnosed illnesses and diseases on the report cards.

¶ 32 Plaintiffs, however, argue that receiving payment from the owners of the animals to which they provide services does not bring them outside the definition of "agents" of the owners because their practices comply with all of the elements of the exemption for owners' agents. Further, they maintain Chow's title of senior veterinary technician is not equivalent to that of a veterinarian, and note that their website states that plaintiffs' services are not substitutes for veterinary procedures. Plaintiffs explain that while Chow is not a certified veterinary technician in Illinois, the website indicates that this was a position that he held in Florida, a state that does not issue licenses to that type of technician. Moreover, plaintiffs contend that the report cards that they provide to clients after a cleaning does not amount to diagnoses because they "merely illustrate layman, non-technical observations."

¶ 33 We note that, while the parties do not purport to be licensed veterinarians on their website, the Act does not exclude only those who represent themselves to be veterinarians from the exemption to an owner's agent. Section 4(8) also explicitly excludes from the exemption those who use any title that is merely "*associated* with the practice of veterinary medicine." [Emphasis added]. 225 ILCS 115/4(8) (West 2012). Thus, even if Chow admits on the company's website that he is not a veterinarian, and

only states that he held a position titled "senior veterinary technician" in a state that did not require a certificate, that does not preclude the conclusion that the exemption does not apply to him. Since it does not appear that the Department's finding that Chow's title is associated with the practice of veterinary medicine was clearly erroneous, we conclude entering the cease and desist letter was not improper.

¶ 34 Moreover, even assuming, *arguendo*, that neither of plaintiffs held a title associated with veterinary medicine, the exemption for owner's agents would still be inapplicable to plaintiffs because the Department correctly found that they diagnosed illnesses or diseases in the report cards. As our supreme court has found in *Michigan Avenue National Bank v. County of Cook*, 191 Ill. 2d 493, 510-11 (2000), the term "diagnosis" is unambiguous, and its meaning includes the "art or act of identifying a disease from its signs and symptoms," as well as "the art of distinguishing one disease from another," and "the determination of what kind of disease a patient is suffering from, especially the art of distinguishing between several possibilities." [Internal citations omitted]. Here, as noted above, the report cards that plaintiffs fill out after cleanings indicate whether the animal has signs of gingivitis or periodontal disease, next to the note on whether their gums appear inflamed or bleeding. Those observations contain not only their determination of possible diseases, but also identify the symptoms that lead them to those conclusions. Under these circumstances, the Department's finding that the report cards provided contained diagnosis, and therefore, brought plaintiffs' services outside the exemption for an owner's agent, was not clearly erroneous. In light of that conclusion, we need not address whether plaintiffs' relationship to their clients would be that of an agent if their practice did not otherwise bring them outside of the exemption.

¶ 35 Plaintiffs next contend that the Act is void for vagueness due to the failure to define "treatment" or "surgery" in the exemption for owners and owners' agents, on which they relied. As previously noted, performing surgery would bring an owner's agent outside of the Act's exemption, while mere treatment

of an animal would not. Plaintiffs appear to argue that since the Act does not define what acts would constitute surgery, as opposed to simple treatment, the Department may have concluded that plaintiffs' services were outside of the exemption because those dental cleaning procedures were surgeries. That argument is unpersuasive. In reaching its conclusion that the exemption for owners and owners' agents is inapplicable to plaintiffs' services, the Department at no point suggest that plaintiffs performed surgery on their clients pets. As discussed above, the Department's decision was based on finding that plaintiffs are not true agents, Chow's title is associated with veterinary medicine, and plaintiffs diagnose diseases. Accordingly, we need not reach the question of whether the Act is unconstitutionally vague for failing to define "surgery" or "treatment." See *Morgan v. Department of Finance & Professional Regulation*, 388 Ill. App. 3d 633, 655 (2009) (this court should not reach a constitutional issue unless it is absolutely necessary to decide the appeal).

¶ 36 Next, plaintiffs argue that the Department violated their rights to due process, as well as the Illinois Administrative Procedures Act (APA), by not providing them with a hearing before entering cease and desist orders against them. This is a question of law, which we review *de novo*. *Key Outdoor, Inc. v. Department of Transportation*, 322 Ill. App. 3d 316, 322 (2001).

¶ 37 With respect to the alleged violation of the APA, plaintiffs rely on section 10-25(a), which requires parties in "contested cases" to be afforded an opportunity for a hearing after reasonable notice (5 ILCS 100/10-25(a) (West 2012)), as well as section 1-5(a), which provides that the APA applies to every agency (5 ILCS 100/1-5(a) (West 2012)). However, the APA defines a "contested case" as "an adjudicatory proceeding (not including ratemaking, rulemaking, or quasi-legislative, informational, or similar proceedings) in which the individual legal rights, duties, or privileges of a party are required by law to be determined by an agency only after an opportunity for a hearing." 5 ILCS 100/1-30 (West 2012). In light of that definition, this court has previously held that a case is only contested, for

purposes of the APA, where the statute under which the agency is proceeding has a specific requirement for such an adversarial hearing. See *Munoz v. Department of Registration and Education*, 101 Ill. App. 3d 827, 829-30 (1981); see also *Key Outdoor, Inc. v. Department of Transportation*, 322 Ill. App. 3d 316, 322-23 (2001) (confirming the holding of the court in *Munoz*).

¶ 38 Here, the Department's cease and desist proceedings are governed by section 25.1(c) of the Act, which does not require a hearing before such an order may be entered, but provides only that:

Whenever in the opinion of the Department any person violates any provision of this Act, the Department may issue a rule to show cause why an order to cease and desist should not be entered against him. The rule shall clearly set forth the grounds relied upon by the Department and shall provide a period of 7 days from the date of the rule to file an answer to the satisfaction of the Department. Failure to answer to the satisfaction of the Department shall cause an order to cease and desist to be issued forthwith. 225 ILCS 25.1(c) (West 2012).

¶ 39 Thus, a case such as this, where the Department issued a rule to show cause to plaintiffs, and later entered a cease and desist order against them after reviewing their answer to the rule, is not contested within the meaning of the APA and, therefore, did not require a hearing under that statute.

¶ 40 While plaintiffs claim that, even if the APA does not require an evidentiary hearing prior to entering a cease and desist order, they were nevertheless entitled to such a hearing as part of their constitutional right to due process. Plaintiffs maintain that they have a property interest in the income derived from their business, as well as in the operations of the business itself.

¶ 41 Procedural due process claims challenge the constitutionality of procedures used to deny a person's life, liberty or property. *Lyon v. Department of Children and Family Services*, 209 Ill. 2d 264, 272 (2004). While the core of due process is the right to notice and a meaningful opportunity to be heard, it is a flexible concept and requires only such procedural protections as fundamental principles of

justice and the particular situation demand. *Callahan v. Sledge*, 2012 IL App (4th) 110819, ¶ 27. In an administrative context, procedural due process does not always require a proceeding that is akin to a judicial proceeding, and does not necessitate a hearing in every case of government impairment of a private interest. *Id.*

¶ 42 As plaintiffs point out, " '[i]t is a well-established constitutional principle that every citizen has the right to pursue a trade, occupation, business or profession.' " *Id*. (quoting *Coldwell Banker Residential Real Estate Services of Illinois, Inc. v. Clayton*, 105 Ill. 2d 389, 397 (1985)). However, this right is limited by the right of the State to regulate such freedom of action where the public health, safety or welfare so requires. *Coldwell Banker*, 105 Ill. 2d at 397. Moreover, it is equally well-established that the constitutional protection of procedural due process does not create property interests, but provides a safeguard only of property interests that a person has already acquired. *Chicago Teachers Union, Local No. 1 v. Board of Education of the City of Chicago*, 2012 IL 112566, ¶ 12. While plaintiffs in this case owned and operated a business together, it is undisputed that neither of them possessed a valid license to legally perform dental cleaning services on animals. More significantly, however, the record reflects that plaintiffs were given notice and an opportunity to be heard by the Department in the form of an answer to the rule to show cause, and again on remand, when they were given the chance to provide more detailed information of the nature of their business.

¶ 43 In any event, a claim of a due process violation will be sustained only where there is a showing of prejudice. *Gonzalez v. Pollution Control Board*, 2011 IL App (1st) 093021, ¶ 42. Although plaintiffs in this case did not personally appear before the Department, they provided all of the evidence from which the Department inferred the facts. As noted above, they had the opportunity to file an answer with materials and affidavits explaining in detail the materials that they use, and every step of the cleaning procedures that they provide, and the record has no indication that the Department relied on

any other evidence in reaching its decision. Plaintiffs do not specify witnesses that they would have called at a hearing, or any evidence that they were unable to present in their answers. Accordingly, the Department's failure to conduct s hearing does not warrant reversal.

¶ 44 Plaintiffs next maintain that, regardless of the Department's propriety in foregoing a hearing, the circuit court also deprived them of due process by placing the burden of production on them on remand, when it instructed plaintiffs to provide information describing their services. They refer to the circuit court's remarks, stating:

> "In certain kinds of proceedings, the agency will issue some kind of a notice, as it did here; only in this case, it was a rule to show cause. And it gives the responding party an opportunity to provide information. In this case, it seems to me that the burden is on the recipient of the petition. And the reason why that would make perfect sense is because the Department, other than identifying the advertisement, really has no means of looking into or investigating the activity of the person who was allegedly conducting, in this instance, veterinary services in violation of the Act."

¶ 45 We initially note that the circuit court's instructions would not warrant reversal because, as noted above, this is an administrative review action, and the only decision on review that made by the Department to enter the cease and desist orders, not any of the decisions made by the circuit court throughout the proceedings below. See *Czajka*, 387 Ill. App. 3d at 172. Furthermore, the circuit court's statement appears to refer to the evidentiary procedure for plaintiff to provide evidence in their defense to the petition, as well as their responsibility to cooperate with the agency's investigation, not to the burden of proof. See, *e.g.*, *Gunia v. Cook County Sheriff's Merit Board*, 211 Ill. App. 3d 761, 773 (1991) (requiring evidence that a sheriff's absence was excused, was not a shift in the burden of proof).

¶ 46 For the foregoing reasons, we affirm the order of the circuit court of Cook County.

¶ 47 Affirmed.