

FILED

June 25, 2004

released at 10:00 a.m.

RORY L. PERRY II, CLERK

SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Starcher, Justice, concurring:

I concur in the result reached by the majority opinion. I write separately to say why I do not concur in the majority opinion itself.

First, I do not think this case requires the creation of new syllabus points. I believe the *Clark* case, and our general law on jurisdiction, provide sufficient authority to decide the case. This is an example of our Court unnecessarily making new law – a charge under which this Court too often suffers. In this case, *stare decisis* would suffice.

Second, I cannot subscribe to the reasoning of new Syllabus Point 3, which states:

Under W. Va. Code § 2-2-5 (2002), an administrative secretary is not an agent or deputy to whom authority may be delegated to sign a disciplinary complaint against a physician under the West Virginia Medical Practice Act, W. Va. Code § 30-3-1 (2002), *et seq.*

My question is: how and where does this Court find any basis in law for saying that an administrative secretary cannot be designated as an agent to sign a complaint?

The Legislature *clearly* allows agents to sign documents. *W.Va. Code*, 2-2-5 [2002]. Is the majority saying that the Legislature has said somewhere that an administrative secretary cannot be designated as an agent to sign a complaint? I cannot find that the

Legislature has said this anywhere.

Or is the majority saying that as a matter of common law or constitutional law neither the Board or the Legislature can designate an administrative secretary as an agent to sign a complaint? On what legal basis can the majority premise such a conclusion? Nothing in the majority opinion addresses this issue.

In my view, neither of these two positions is tenable. My view is that the Board *can* authorize their administrative secretary to sign a complaint as their agent, exactly as the Legislature has authorized in *W.Va. Code, 2-2-5* [2002].

However, because Dr. Hoover did not participate in the hearings below because there was an admitted uncertainty as to the complaint's validity, I agree with the result of the majority opinion – that the case must be tried again.

Accordingly, I concur.