

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

**IN RE: HERBERT J. THOMAS, THOMAS MEMORIAL HOSPITAL
ASSOCIATION d/b/a THOMAS MEMORIAL HOSPITAL,**

FILED

October 7, 2026

No. 25-ICA-369

(CON File No. 24-3-13064-PV)

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ASHLEY N. DEEM, CHIEF DEPUTY CLERK
INTERMEDIATE COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

In this appeal, Petitioner Charleston Area Medical Center, Inc. (“CAMC”), argues that Herbert J. Thomas Memorial Hospital Association, d/b/a Thomas Memorial Hospital (“Thomas”) opened an ambulatory health care facility in Hurricane, West Virginia, without obtaining a required certificate of need from the West Virginia Health Care Authority (“HCA”). In the August 13, 2025, order on appeal, the HCA found that Thomas’s facility complied with certificate of need law. Thomas and the HCA each filed a response on appeal in support of the HCA’s order.¹ CAMC filed a reply. Thomas also filed a motion to dismiss this appeal, arguing that the HCA’s August 13, 2025, order finding no violation of law is not an appealable order. CAMC filed a response to Thomas’s motion to dismiss.

After considering the parties’ arguments, the record on appeal, and the applicable law, we find that this Court lacks subject matter jurisdiction over this appeal. For the reasons set forth below, a memorandum decision dismissing this appeal is appropriate under Rule 21 of the West Virginia Rules of Appellate Procedure.

On August 15, 2024, CAMC sent a letter to the director of the certificate of need program at the HCA, asking the HCA to investigate whether Thomas violated certificate of need law by operating an ambulatory health care facility in Hurricane. CAMC asserted that Thomas offered new health care services at this facility without obtaining a certificate of need. CAMC claimed that this violated West Virginia Code § 16-2D-8(a)(12), which requires a health care provider to obtain a certificate of need for “[t]he addition of health services offered by or on behalf of a health care facility which were not offered on a regular basis by or on behalf of the health care facility within the 12-month period prior to the time the services would be offered.”

¹ CAMC is represented by Thomas G. Casto, Esq., Webster J. Arceneaux III, Esq., and Jackson D. Snively, Esq. Thomas is represented by Albert F. Sebok, Esq., Alaina N. Crislip, Esq., and Neil C. Brown, Esq. The HCA is represented by Attorney General John B. McCuskey, Esq., and Matthew K. Niu, Esq.

On November 7, 2024, the HCA’s certificate of need director sent a letter to Thomas’s chief executive officer, Dr. Gregory Rosencrance, asking Thomas to respond to the allegations in CAMC’s August 15, 2024, letter. Subsequently, both Thomas and CAMC sent various letters to the HCA related to this matter. On August 13, 2025, the HCA issued its “Potential Violation Order” finding that Thomas had “presented information, as required by the Board, which shows that at no time has the Teays Valley Location ceased all operations for twelve (12) months” and that Thomas had “not performed any health care service which they are not currently authorized to offer.” Accordingly, the HCA determined that Thomas’s Hurricane facility was not in violation of certificate of need law. It is from the August 13, 2025, Potential Violation Order that CAMC now appeals.

As we have recognized, the Intermediate Court of Appeals is a court of limited appellate jurisdiction. *See G&G Builders, Inc. v. Cent. Mut. Ins. Co.*, 252 W. Va. 635, 644, 924 S.E.2d 743, 752 (Ct. App. 2025). “It is, of course, axiomatic that a court of limited appellate jurisdiction is obliged to examine its own power to hear a particular case.” *James M.B. v. Carolyn M.*, 193 W. Va. 289, 292, 456 S.E.2d 16, 19 (1995).

In its motion to dismiss and its brief on appeal, Thomas contends that this Court lacks jurisdiction over this appeal. The HCA takes the same position in its appellate brief. Specifically, Thomas argues that when the HCA entered its order finding no violation, the HCA was acting in its investigatory capacity rather than its adjudicatory capacity. Thomas contends that this Court’s appellate jurisdiction over the HCA is limited to declaratory rulings and orders resolving contested cases, and that it has no jurisdiction over orders entered in investigations undertaken by the HCA. In contrast, CAMC contends that three separate statutes provide this Court with appellate jurisdiction over the HCA’s Potential Violation Order: West Virginia Code § 29A-4-1 (West Virginia Code §§ 29A-1-1 through 29A-7-4 is collectively referred to as the West Virginia Administrative Procedures Act (“WVAPA”)), West Virginia Code § 16-2D-16a(a)(2), and West Virginia Code § 16-29B-13.² Further, CAMC argues that this Court’s rejection of a prior challenge to its appellate jurisdiction over an HCA determination of reviewability in *St. Joseph’s Hosp. of Buckhannon, Inc. v. Stonewall Jackson Mem’l Hosp. Co.*, 250 W. Va. 378, 903 S.E.2d 247 (Ct. App. 2024) supports the conclusion that this Court has jurisdiction in this matter. We now address CAMC’s suggested sources of jurisdiction in turn.

² CAMC raises three assignments of error on appeal. However, because this Court lacks subject matter jurisdiction over this appeal, we are unable to address CAMC’s assignments of error. *Cf. Syl. Pt. 1, Hinkle v. Bauer Lumber & Home Bldg. Ctr., Inc.*, 158 W. Va. 492, 211 S.E.2d 705 (1975) (“Whenever it is determined that a court has no jurisdiction to entertain the subject matter of a civil action, the forum court must take no further action in the case other than to dismiss it from the docket.”).

In invoking West Virginia Code § 29A-4-1, CAMC argues that the HCA’s August 13, 2025, Potential Violation Order is appealable as a declaratory ruling of an administrative agency. Under West Virginia Code § 29A-4-1,

On petition of any interested person, an agency may issue a declaratory ruling with respect to the applicability to any person, property or state of facts of any rule or statute enforceable by it. A declaratory ruling, if issued after argument and stated to be binding, is binding between the agency and the petitioner on the state of facts alleged, unless it is altered or set aside by a court, but it shall not be binding on any other person. Such ruling is subject to review before the court and in the manner hereinafter provided for the review of orders or decisions in contested cases. Each agency may prescribe by rule the form for such petitions and the procedure for their submission, consideration and disposition.

W. Va. Code § 29A-4-1 (1964).³ However, beyond citing this provision, CAMC offers no analysis of why the HCA’s Potential Violation Order should be construed as a declaratory ruling.

The HCA has promulgated a legislative rule governing both declaratory rulings and rulings on reviewability. *See* W. Va. Code R. § 65-32-18 (2024). Under this rule, “[a] health care facility, health care provider or other entity regulated by the statute . . . may apply to the Authority for a declaratory ruling on any matter regulated by the statute or any rule promulgated under the statute.” W. Va. Code R. § 65-32-18.1. A person requesting a declaratory ruling from the HCA must make the request in writing to the Chairman of the HCA and must include “a verification signed by the Chief Executive Officer.” W. Va. Code R. § 65-32-18.3.

Here, the record shows that CAMC did not follow the requirements for a declaratory ruling. CAMC addressed its August 15, 2024, letter to the director of the certificate of need program at the HCA, rather than the Chairman, and CAMC’s request did not include the verification required for a request for a declaratory ruling. Moreover, CAMC did not actually request a declaratory ruling in its August 15, 2024, letter to the HCA; in fact, CAMC did not request a formal ruling from the HCA at all. Instead, CAMC requested that

³ Although this code section does not specifically refer to the Intermediate Court of Appeals, the reference to “review before the court and in the manner hereinafter provided for the review of orders or decisions in contested cases,” clearly implicates the appeal provisions set forth in West Virginia Code § 29A-5-4 (2021). Under West Virginia Code § 29A-5-4(b), final orders of administrative agencies entered in contested cases after June 30, 2022, are appealable to this Court. No party disputes that the HCA is an “agency” for the purposes of the WVAPA.

the HCA investigate Thomas's facility and, if it determined that Thomas was violating certificate of need law, require Thomas to cease services at the facility until Thomas acquired a certificate of need.⁴

Moreover, HCA investigations of violations are not in the nature of administrative declaratory rulings. As noted above, an administrative agency's declaratory ruling "is binding between the agency and the petitioner on the state of facts alleged, . . . but it shall not be binding on any other person." W. Va. Code § 29A-4-1. In contrast, the statutes governing HCA investigations of potential violations demonstrate that, where its investigations are substantiated, the HCA can compel the targeted person to appear at a hearing. West Virginia Code § 16-2D-19, which governs the HCA's authority to enjoin and penalize violators, provides that where the HCA finds "probable cause to believe that a person is in violation of the provisions of this article . . . the authority shall provide the person with written notice which states the nature of the alleged violation and the time and place at which an administrative hearing shall take place." W. Va. Code § 16-2D-19(c) (2016). West Virginia Code § 16-2D-18, which governs denials or revocations of licenses, similarly provides that where the HCA finds that a person is illegally operating without a certificate of need, the HCA "shall provide a person with written notice which shall state the nature of the violation and the time and place at which the person shall appear to show good cause why its license should not be revoked or denied." W. Va. Code § 16-2D-18 (2016). These statutes address enforcement against the alleged violator.

Because an administrative declaratory ruling only binds the HCA and the petitioner requesting it, any such ruling sought by CAMC would not have bound Thomas. Here, CAMC explicitly asked the HCA to investigate Thomas and compel Thomas to cease operations at the Hurricane facility. The HCA performed the requested investigation and found no violations. Therefore, we conclude that the HCA's August 13, 2025, Potential Violation Order was the result of an investigation and was not an administrative declaratory ruling triggering application of West Virginia Code § 29A-4-1. Accordingly, we find that this Court does not have appellate jurisdiction under West Virginia Code § 29A-4-1.

Next, CAMC argues that the HCA's August 13, 2025, order is appealable under West Virginia Code § 16-2D-16a(a)(2):

⁴ The HCA also did not treat CAMC's August 15, 2024, letter as a request for a declaratory ruling. The HCA did not characterize its August 13, 2025, Potential Violation Order as a declaratory ruling. Moreover, the HCA did not issue the order within forty-five days of receiving CAMC's request, as it is required to do for declaratory rulings. *See* W. Va. Code R. § 65-32-18.4 (providing that if the HCA receives all necessary information in a timely manner, it is required to issue a declaratory ruling within forty-five days of its receipt of a request for a ruling).

An appeal of a final decision in a certificate of need review, issued by the authority after June 30, 2022, shall be made to the West Virginia Intermediate Court of Appeals, pursuant to the provisions governing the judicial review of contested administrative cases in § 29A-5-1 *et seq.* of this code.

W. Va. Code § 16-2D-16a(a)(2) (2021). On appeal, Thomas and the HCA argue that the reference to “contested administrative cases” and the cross reference to § 29A-5-1 *et seq.* limit appeals under West Virginia Code § 16-2D-16a(a)(2) to “contested cases” as defined in the WVAPA. Conversely, CAMC maintains that West Virginia Code § 16-2D-16a does not limit the scope of this Court’s appellate jurisdiction to contested cases. We agree with Thomas and the HCA.

The WVAPA provides that “[a]ny party adversely affected by a final order or decision in a contested case is entitled to judicial review thereof under this chapter.” W. Va. Code § 29A-5-4(a) (2021). The Supreme Court of Appeals of West Virginia (“SCAWV”) has interpreted this provision to mean that “[a]ppellate review of a final order of an administrative agency is limited to a ‘contested case.’” *State ex rel. Miller v. Reed*, 203 W. Va. 673, 683, 510 S.E.2d 507, 517 (1998). The WVAPA defines a “contested case” as “a proceeding before an agency in which the legal rights, duties, interests or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing.”⁵ W. Va. Code § 29A-1-2(b) (2015). Under this definition, an agency proceeding that does not include a hearing is not a contested case. *See State ex rel. Frazier v. McGraw*, 243 W. Va. 721, 724, 850 S.E.2d 720, 723 (2020). Therefore, the SCAWV reasoned that where an agency does not hold a hearing, the proceeding is not a contested case, and no party has the right to appeal. *See id.* at 724, 850 S.E.2d at 723 (“Where there was no hearing before the agency, there was no contested case from which a party could appeal.” (citation modified)); *State ex rel. Frazier v. Thompson*, 243 W. Va. 46, 54, 842 S.E.2d 250, 258 (2020).⁶

Below, the record demonstrates that the HCA did not hold a hearing in this matter; rather, the matter was resolved after an exchange of correspondence between the HCA and Thomas. In fact, CAMC does not argue that the HCA’s investigation of Thomas was a contested case, conceding in its reply brief on appeal that it “does not disagree that this matter was not a contested case held under the provisions of W. Va. Code § 16-2D-13.”

⁵ This section also provides several specific examples, not relevant to this case, of agency proceedings that do not constitute a contested case. *See* W. Va. Code § 29A-1-2(b).

⁶ The three SCAWV cases we cite in this paragraph apply the version of West Virginia Code § 29A-5-4 that became effective in 1998, rather than the current version that became effective in 2021. However, as the dispositive language of W. Va. Code § 29A-5-4(a) remains the same, we conclude that the 2021 amendment does not affect the applicability of the SCAWV’s interpretations.

Accordingly, we agree with Thomas and the HCA that the HCA's investigation below was not a contested case as defined by the WVAPA.

However, while CAMC acknowledges that the proceeding below was not a contested case, it nonetheless maintains that the HCA's August 13, 2025, Potential Violation Order is appealable under West Virginia Code § 16-2D-16a(a)(2). In that vein, CAMC argues that, although West Virginia Code § 16-2D-16a(a)(2) specifically requires that appeals shall be filed "pursuant to the provisions governing the judicial review of contested administrative cases in § 29A-5-1 *et seq.* of this code," the WVAPA provision restricting appeals to "contested cases," does not apply. In CAMC's view, West Virginia Code § 16-2D-16a(a)(2) defines what is an appealable order—a final decision in a certificate of need review—while the WVAPA merely "provides the process and the general statutory grounds for the appeal." Accordingly, CAMC contends that the HCA's August 13, 2025, Potential Violation Order is appealable under West Virginia Code § 16-2D-16a(a)(2) because it was a "final decision in a certificate of need review,"⁷ even though it was not entered in a contested case. We disagree.

West Virginia Code § 16-2D-16a(a)(2) unambiguously denotes that appeals "shall be made to the West Virginia Intermediate Court of Appeals, pursuant to the provisions governing the judicial review of contested administrative cases in § 29A-5-1 *et seq.* of this code." The statute does not refer to the WVAPA only for the standard of review. It provides that the appeal itself "shall be made" under the WVAPA provisions governing judicial review of a contested administrative case. Applying the plain meaning of this language, we find that West Virginia Code § 29A-5-4(a) applies to appeals filed under West Virginia Code § 16-2D-16a(a)(2) and limits such appeals to "contested cases."⁸ CAMC's reading

⁷ The HCA also argues that the August 13, 2025, Potential Violation Order is not a "final decision in a certificate of need review." Since we find that the Potential Violation Order is not appealable under West Virginia Code § 16-2D-16a(a)(2), as it was not entered in a contested case, we find it unnecessary to address this argument.

⁸ The SCAWV has applied the contested case requirement of West Virginia Code § 29A-5-4(a) when interpreting other agency judicial review statutes that incorporated the provisions of the WVAPA. In *Thompson*, the SCAWV found that an administrative driver's license revocation was not appealable under West Virginia Code § 17C-5A-2 (2015) where the petitioner had not timely sought a hearing, because the matter was not a contested case. See *Thompson*, 243 W. Va. at 52-55, 842 S.E.2d at 256-59. The applicable version of West Virginia Code § 17C-5A-2 provided that "[a] person whose license is at issue and the commissioner shall be entitled to judicial review as set forth in chapter twenty-nine-a of this code." W. Va. Code § 17C-5A-2(s) (2015). Similarly, in *Martin v. Hamblet*, 230 W. Va. 183, 737 S.E.2d 80 (2012), the SCAWV found that a surface owner of a parcel of land could not appeal the West Virginia Department of Environmental Protection's issuance of a well work permit under West Virginia Code § 22-6-40 (1994) or West Virginia Code §

does not give effect to that language. Thus, as the matter on appeal was not a contested case, we conclude that the August 13, 2025, Potential Violation Order was not appealable under West Virginia Code § 16-2D-16a(a)(2).

Next, CAMC contends that the August 13, 2025, Potential Violation Order is appealable to this Court under West Virginia Code § 16-29B-13 (1983). However, CAMC provides no analysis related to the applicability of this particular statute. Thomas argues that West Virginia Code § 16-29B-13, like West Virginia Code § 16-2D-16a(a)(2), incorporates the provisions of the WVAPA, and that CAMC accordingly cannot appeal under § 16-29B-13 because the matter below was not a contested case as defined in the WVAPA. We agree with Thomas.

As an initial matter, it is not clear the extent to which West Virginia Code § 16-29B-13 applies to appeals from the HCA to this Court. West Virginia Code § 16-29B-13 has not been amended to reflect the existence of the Intermediate Court of Appeals, and therefore still sets forth a two-tiered appeal system under which the HCA's decisions were appealable to a "review agency" and further that the review agency's decisions were appealable to the Circuit Court of Kanawha County. *See* W. Va. Code § 16-29B-13(a)-(f). However, we find it unnecessary to decide whether this section applies, because even if it does, appeals under West Virginia Code § 16-29B-13 are subject to the provisions of the WVAPA and are therefore limited to contested cases.

West Virginia Code § 16-29B-13 provides that the review agency "shall review appeals" from decisions of the HCA "in accordance with the provisions governing the judicial review of contested administrative cases in section four, article five, chapter twenty-nine-a of this code." W. Va. Code § 16-29B-13(b). Similarly, this section also provides that "[t]he decision of the review agency shall be reviewed by that circuit court in accordance with the provisions for the judicial review of the administrative decisions contained in section four, article five, chapter twenty-nine-a of this code." W. Va. Code § 16-29B-13(f). Assuming that one of these subsections now applies to appeals from the HCA to this Court, because each subsection requires appeals to comport with the WVAPA, they permit appeals only in contested cases. As we have already discussed, the HCA's

22-6-41 (1994), because each statute indicated that the WVAPA governed review. *Martin v. Hamblet*, 230 W. Va. 183, 192 n.12, 737 S.E.2d 80, 89 n.12 (2012). As the surface owner was not entitled to a hearing under any statute, the *Martin* Court determined there was no contested case for purposes of the WVAPA and that the surface owner accordingly had no right to appeal under either statute. *Id.* Each statute at issue in *Martin* provided that "[a]ll of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such judicial review with like effect as if the provisions of [said] section four were set forth in extenso in this section." W. Va. Code § 22-6-41 (1994); W. Va. Code § 22-6-40 (1994).

proceeding below was not a contested case. Accordingly, the HCA's August 13, 2025, Potential Violation Order is not appealable to this Court under West Virginia Code § 16-29B-13 (1983).

Finally, CAMC relies heavily on *St. Joseph's Hosp. of Buckhannon, Inc. v. Stonewall Jackson Mem'l Hosp. Co.*, 250 W. Va. 378, 903 S.E.2d 247 (Ct. App. 2024), in which a majority of this Court at the time determined that this Court had appellate jurisdiction over HCA determinations of reviewability ("DORs").⁹ CAMC argues that there is no material difference between the process for potential violation complaints, like its August 15, 2024 letter, and requests for DORs, and that if this Court has jurisdiction over DORs, it must have jurisdiction over orders resolving investigations into potential violations. We disagree.

As an initial matter, requests for DORs are distinct from HCA investigations of potential violations. Under W. Va. Code § 16-2D-7, to obtain a DOR, "[a] person may make a written request to the authority for it to determine whether a proposed health service is subject to the certificate of need or exemption process." W. Va. Code § 16-2D-7 (2016). DORs are governed by the same regulation that governs declaratory rulings, and the two largely follow the same procedure. *See* W. Va. Code R. 65-32-18. In contrast, CAMC does not identify an applicable statute or rule that provides a third party with the right to file a complaint against another entity and participate in any resulting investigation the HCA conducts. As discussed above, several statutes address the HCA's ability to investigate potential violators of certificate of need law and compel them to appear at a hearing if the investigation is substantiated. *See* W. Va. Code § 16-2D-18; W. Va. Code § 16-2D-19. However, neither West Virginia Code § 16-2D-18 nor § 16-2D-19 provides a third party, like CAMC, the right to participate in any such investigation or to be treated as an affected party in any resulting hearing. Indeed, CAMC disclaims reliance on W. Va. Code § 16-2D-19, but fails to identify any other authority demonstrating that its complaint should be treated similarly to a request for a DOR.

Additionally, in *St. Joseph's*, this Court referenced several statutes—West Virginia Code §§ 16-2D-16a(a)(2), 16-29B-13, 29A-4-1, and 29A-5-4—and determined that "one or more of the aforementioned statutes confer this Court with jurisdiction over this case." *St. Joseph's*, 250 W. Va. at 383 n.4, 903 S.E.2d at 252 n.4. As discussed above, the HCA's Potential Violation Order is not appealable under any of these statutes. Moreover, *St. Joseph's* is distinguishable from the instant case in that the challenge to this Court's jurisdiction in *St. Joseph's* was focused on whether a DOR was a "final decision in a certificate of need review" as required by West Virginia Code § 16-2D-16a(a)(2), which does not reference DORs. Accordingly, we find that this Court's decision in *St. Joseph's*

⁹ Although the SCAWV reversed this Court's decision in *St. Joseph's* on the merits, the SCAWV left this Court's conclusion that it has jurisdiction over DORs undisturbed without addressing the issue. *See St. Joseph's Hosp. of Buckhannon, Inc. v. Stonewall Jackson Mem'l Hosp. Co.*, 252 W. Va. 526, 923 S.E.2d 456 (2025).

does not demonstrate that this Court has jurisdiction over the HCA's August 13, 2025, Potential Violation Order.

Therefore, based on the foregoing, we grant Thomas's motion to dismiss and dismiss this appeal for lack of subject matter jurisdiction.

Dismissed.

ISSUED: October 7, 2026

CONCURRED IN BY:

Chief Judge Daniel W. Greear
Judge Charles O. Lorensen
Judge S. Ryan White