



NY Court Finds Physicians Facing a Fine or License Revocation Have Jury Trial Rights

For better or worse, administrative hearings before the Board for Professional Medical Conduct (and other administrative tribunals) provide a streamlined process for professional discipline. This expedience comes at a high cost for those with the most to lose; many feel that the proceedings before the Board are inherently unfair because the law provides for minimal due process in this arena. For example, the burden of proof is surprisingly low. Additionally, there are no jury trials in administrative hearings, and regulations dispense with meaningful discovery and all evidentiary rules. Adding insult to injury, the administrative law judge, the trier of fact, and the prosecutor are all chosen and paid by the State. All of this disfavors the professional facing loss of license and/or other career-shattering consequences.

However, in a recent decision that threatens the entire administrative process, a court in Schoharie County, New York held that professionals facing license revocation or fines may have a right to a jury trial and may no longer face such one-sided, draconian proceedings when so much is at stake.

In *Ball v. N.Y. State Dep't of Health*,^[1] the plaintiff, a licensed emergency medical technician, was charged by the New York State Department of Health with seven specifications of Professional Misconduct arising from alleged medical negligence. Charges of Professional Misconduct were filed, a hearing was held before an administrative hearing committee and, predictably, Ball's license was revoked. Ball challenged that decision, asserting that the Seventh Amendment to the U.S. Constitution guaranteed his right to a jury trial.

Until *Ball*, the Seventh Amendment has been viewed as the "lone component of the Bill of Rights that has yet to be made applicable to the States via the Due Process Clause" of the Fourteenth Amendment.^[2] The court undertook a critical look at long-held judicial orthodoxy regarding the limited right to jury civil trials, and in so doing, it found that because civil jury trials are either "'fundamental to our scheme of ordered liberty,' and/or 'deeply rooted in this Nation's history and tradition,'"^[3] the right to a jury trial is indeed guaranteed by the Seventh and Fourteenth Amendments and must be applied to certain state proceedings.

In so finding, the court considered two factors: (1) the nature of the claim, and (2) the remedy sought. The court noted that the charges against Ball were predicated upon common law torts (i.e., allegations of professional negligence) which traditionally implicate jury trial rights. In addition, the matter involved the threat of monetary fines and/or license revocation, thereby placing recognized property rights at issue. The court held that where the administrative penalty sought by the State is: (a) necessarily predicated upon proof of the elements a common law tort; and (b) where the State seeks to abridge recognized property rights (including a professional license), the licensee is entitled to a trial by jury.

[1] 233 N.Y.S.3d 893 (N.Y. Sup. Ct. 2025).

[2] *Id.* at 898.

[3] *Id.* at 901.

The court's decision, if upheld, holds the potential to upend much of New York's administrative justice system by forcing the State to reconsider how administrative penalties that implicate property rights can be sought or imposed. The matter is now on appeal, and the few courts that have cited to it demonstrate a reluctance to cast aside the long-standing view that the Seventh Amendment is indeed *inapplicable* to States, which alone may determine which civil causes require a jury trial.

Nonetheless, if upheld, we should not discount the case's potential requiring jury trials in many professional misconduct proceedings cases. *Ball* suggests that: (a) where fines are sought or where the practitioner is at risk of losing his or her license, and (b) the underlying conduct resembles a common law tort, the licensee will be entitled to a jury trial. For example, in misconduct cases where the licensee is charged with Gross Negligence, Negligence on More than One Occasion, and Practicing the Profession with Moral Unfitness (i.e., billing fraud or even sexual boundary cases), and where a fine or license revocation is sought, *Ball* would likely entitle the respondent to a trial by jury.

From a practical perspective, state administrative agencies are not empowered to summon or impanel jurors. Indeed, the right to trial by jury suggests then that these proceedings would necessarily be held in court before a jury. However, no process yet exists for that, and the Board could be required to have counsel initiate civil litigation whenever a jury is demanded.

Unless and until *Ball* is upheld, there is little one may do to vindicate this new-found right. For example, court challenges to proceedings without a jury would be limited to Article 78 proceedings, and while a stay may be sought while *Ball* is on appeal, the likelihood of success is low because the State will almost certainly argue that: (a) there was a failure exhaust administrative remedies, or (b) the long-standing administrative scheme is neither arbitrary, capricious, nor contrary to law. Thus, it appears that before initiating litigation to vindicate the right to a jury, one would have to wait for a final order of revocation, and this is too little too late.

In the short term, the best counsel can do is protect the record and make sure that we do not waive the nascent right to a jury trial provided by *Ball* while the matter is on appeal. We suggest that this may be done by written application to the Administrative Law Judge or by serving a demand for a jury trial as part of the Answer to the Statement of Charges, which automatically becomes part of the record and preserves the objection.

Whether appellate courts ultimately embrace or overturn *Ball* will be anyone's guess, and much is still unclear. What remains clear, however, is that the role of the jury in professional discipline is no longer a settled matter. The stakes are high - we should do what we can to vindicate and preserve those rights.

For more information, please contact:

Douglas M. Nadjari
(516) 663-6536
dnadjari@rmfpc.com