

LISA E. ROCHE

v.

BOARD OF LICENSURE IN MEDICINE

Submitted on Briefs June 26, 2003
Decided July 8, 2003

Panel: SAUFLEY, C.J., and CLIFFORD, RUDMAN, DANA, ALEXANDER,
CALKINS, and LEVY, JJ.

MEMORANDUM OF DECISION

Lisa E. Roche appeals from the judgment of the Superior Court (York County, *Brennan, J.*) dismissing her M.R. Civ. P. 80C petition for review of final agency action. Contrary to Roche's first contention, nothing in 32 M.R.S.A §§ 3263-3300 (1999 & Supp. 2002) compels a result contrary to the interpretation of the statutes defining its own jurisdiction advanced by the Maine Board of Licensure in Medicine. *See Maritime Energy v. Fund Ins. Review Bd.*, 2001 ME 45, ¶ 7, 767 A.2d 812, 814. Although the Board licensed this Director of the Bureau of Health to practice medicine, the Board did not have jurisdiction to

investigate Roche's complaint because the Director was not "practicing medicine" when she reported health statistics in her administrative capacity.¹ *See* 32 M.R.S.A. §§ 3269, 3270, 3282-A (1999 & Supp. 2002); *accord*, *Morris v. D.C. Bd. of Med.*, 701 A.2d 364, 368 (D.C. 1997) (holding that a doctor was not practicing medicine when, as a medical director of a health insurance company, he managed and reviewed an appeal process for post-treatment payment claims).

Moreover, contrary to Roche's second contention, even if it were possible for the Board to investigate unidentified physicians, Roche's complaint failed to request such an investigation, and she never presented her argument to the Superior Court. Because she presses this argument for the first time on appeal, it is not properly preserved. *See MP Assocs. v. Liberty*, 2001 ME 22, ¶ 18, 771 A.2d 1040, 1046 (holding that arguments raised for the first time on appeal are not preserved). Because the Board lacked jurisdiction, we need not address Roche's remaining arguments.

The entry is:

Judgment affirmed.

¹ The Bureau of Health is a division of the Maine Department of Human Services, *see* 22 M.R.S.A. § 1 (Supp. 2002), and assists the Department in the compilation of health statistics.

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