IN THE SUPREME COURT OF MISSISSIPPI

GINNY WATKINS	APPELLANT
VS.	NO. 2010-IA-00093-SCT
MISSISSIPPI BOARD OF NURSING	APPELLEE

INTERLOCUTORY APPEAL FROM

THE CHANCERY COURT OF

RANKIN COUNTY, MISSISSIPPI

BRIEF OF THE APPELLANT

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CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following listed parties have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

PARTIES:

1. Ginny Watkins, Appellant
2. Mississippi Board of Nursing, Appellee

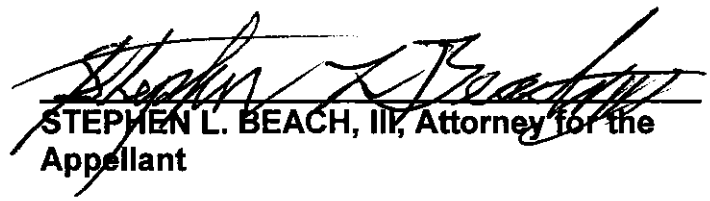
WITNESSES:

1. Debbie Ricks, RN, Board of Nursing Hearing Panel
2. Darlene Lindsey, RN, Board of Nursing Hearing Panel
3. Opal Ezell, LPN, Board of Nursing Hearing Panel
4. Emily Pharr, LPN, Board of Nursing Hearing Panel
5. Sheree Zyblot, witness at Board of Nursing Hearing Panel
6. Ann Ricks, witness at Board of Nursing Hearing Panel
7. Jane Tallant, witness at Board of Nursing Hearing Panel
8. Linda Watkins, witness at Board of Nursing Hearing Panel
9. Nina LoMedico, witness at Board of Nursing Hearing Panel
10. Spencer Karges, witness at Board of Nursing Hearing Panel
11. Rhonda Singleton, witness at Board of Nursing Hearing Panel
12. Leola Kersh, witness at Board of Nursing Hearing Panel

ATTORNEYS OF RECORD:

1. Stephen L. Beach, III, Esq., Attorney for the Appellant, Client Interest
2. Brett Thompson, Attorney for the Appellee
3. J. D. Woodcock, Esq., Attorney for the Appellee
4. Hon. John Grant, Chancery Court Judge, Rankin County

Respectfully Submitted,



STEPHEN L. BEACH, III, Attorney for the Appellant

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STATEMENT OF THE ISSUES

Pursuant to MRAP Rule 28 (b), the Appellant, by and through counsel, submits the following Statement of the Issues without additional commentary and/or argument contained therein:

1. Did the Chancery Court commit error in finding that the record in this cause should be limited to the evidentiary hearing transcript of the Hearing Panel of the Mississippi Board of Nursing?

STATEMENT OF THE CASE

This case is an interlocutory appeal of an Order Overruling a Motion to Adopt Attorney's Examination of Record and Proposed Corrections to the Record dated January 19, 2010, issued by the Rankin County Chancery Court. (RE 497-498) The order in dispute severely restricts the record of an appeal by the Appellant, Ginny Watkins, (hereinafter referred to as "Ginny," "Watkins," or "Ginny Watkins") from a decision by the Mississippi Board of Nursing (hereinafter referred to as the "Board").

Ginny Watkins of Brandon, Mississippi, applied for an unrestricted license as a registered nurse (RN) and was denied this license through an administrative denial on the decision of the Mississippi Board of Nursing's interim director. (RE 65-66) Watkins appealed the administrative denial of her application and an evidentiary appeal hearing was held on July 26, 2007, before a hearing panel of the Board. (R 1-98, RE 68-69) The Board's hearing panel ruled that there was insufficient evidence to grant Ginny Watkins an unrestricted RN license. The Board issued a Final order denying the requested relief on August 16, 2007. (RE 112-118) Being aggrieved, Ginny Watkins filed an appeal to be heard before the full Board and appeal briefs were filed in support of Watkins and the Board. (RE 349-367)

On February 20, 2008, the Board notified Watkins and counsel that the full Board would hear the appeal on April 4, 2008. Both counsel waived oral argument and entered a stipulation to the admission of exhibits presented at the evidentiary hearing. (RE 368-391) On April 17, 2008, a Final Order was issued by the Board reversing the ruling of the hearing panel, however, this order granted Ginny a *restricted* RN license while at the same time stating that the Board had granted her the relief she had requested in the appeal (for an *unrestricted* RN license). (RE 392-406) To clear up the confusion, Watkins, through counsel, filed

a Motion to Suspend Proceedings to Clarify Final Order of Board on May 5, 2008. (RE 407-421) The Board issued an Amended Final Order granting Ginny a restricted RN license on May 12, 2008. Two days later, on May 14, 2008, the Board issued an Order to Suspend Proceedings and to Clarify the Final Order. (RE 422-434)

On May 29, 2008, Watkins, through counsel, filed a Motion to Reconsider the Amended Final Order and to Reopen Record to present new evidence related to Ginny's nursing practice at the VA Hospital in Jackson. (RE 435-440) On June 9-10, 2008, the Board issued an order extending the appeal time until the Board had ruled on the Motion to Reconsider. (RE 441) A notice of hearing on the Motion to Reconsider was set before the full Board on December 5, 2008. A Board hearing schedule was attached to the notice of hearing. (RE 442-445)

On December 5, 2008, one hour before the scheduled hearing by the full Board on the Motion to Reconsider, Ginny's attorney received a phone call by the Board's Executive Director, Melinda E. Rush, that the Board would not entertain oral argument and that neither the attorney or Ginny Watkins were allowed to attend the hearing. (RE 451-462) On March 4, 2009, the Board's attorney notified Ginny that a final order had been issued regarding the Motion to Reconsider. (Re 446) An Order *Nunc Pro Tunc* signed by the Board's Executive Director was issued on the same date declaring that the Motion to Reconsider would not be considered after Ginny's attorney was notified that the motion would be heard by the full Board. (RE 447)

On March 20, 2009, the Board attorney sent Ginny's attorney a pleadings index which stated that the unapproved minutes and approved minutes of the full Board's hearing would be made available. (RE 448-450) On March 31, 2009, Ginny's attorney filed an affidavit regarding the denial of oral argument before the full Board on the Motion to Reconsider. This affidavit was filed to make a record

that the oral argument had been summarily denied after being initially granted by the Board. (RE 451-462)

On April 1, 2009, Ginny Watkins, through counsel, filed a Notice of Appeal to the Rankin County Chancery Court. (RE 8-11, CP 2) On April 3, 2009, the required $100.00 cash bond pursuant to Section 73-15-31 of the Mississippi Code of 1972, as amended, was posted and filed with the Chancery Court Clerk. (RE 12, CP 6) On May 20, 2009, Ginny's counsel filed an Amendment to the Designation off Record to include a May 18, 2009, Rankin County Circuit Court order related to Ginny's case. (RE 13-15, CP 7) A transcript prepared by Patsy Ainsworth Reporting, Inc., is then filed with the Rankin County Chancery Court Clerk on June 8, 2009, with a letter of confirmation filed on June 11, 2009. (CP 10)

A most unusual occurrence happened on July 10, 2009. The Board, by and through its attorney, filed a Response to Designation of Record and Objections thereto. (RE 16-18, CP 11) On the same date, the Board's attorney personally delivered to the Rankin County Chancery Court Clerk a set of documents which contained a transcript of the Watkins evidentiary appeal hearing and a list of exhibits. This set of documents was *not marked as being filed by the Rankin County Chancery Clerk.* The Board's attorney then instructed the clerk to "hold" the documents and *not to mark the documents as being filed with the clerk.* (RE 33-118, 119-272)

In response to this strange procedure, the undersigned counsel filed on July 30, 2009, the Attorney's Examination and Proposed Corrections pursuant to MRAP Rules 11(d)(2) and 10(b)(5). (RE 19-32, CP 14) This document included three sets of Exhibits as follows:

(1) Exhibit "A" consisted of documents placed in the Rankin County Chancery Clerk's office but not stamped or marked "filed" (RE 33-118);

(2) Exhibit "B" included documents marked "Original" which were placed in the Rankin County Chancery Clerk's Office by the Board's attorney but not stamped or marked "filed" (RE 119-272); and,

(3) Exhibit "C" which included documents that should be filed and made a part of the record as listed in the Attorney's Examination and Proposed Corrections (in other words, what the record ***should*** contain). (RE 273-464)

In support of this document, Watkins' counsel filed on September 10, 2009, a Memorandum Brief which outlined to the Chancellor each and every item involved with the record and why the items should or should not be included. (RE 465-492, CP 460) On December 15, 2009, Ginny Watkins' attorney filed a Motion to Adopt the Attorney's Examination of Record and Proposed Corrections. (RE 493-496, CP 490)

After a hearing was held on this motion, the Chancellor restricted the record to the transcript of the evidentiary appeal hearing held on July 26, 2007, before Board's hearing panel. The Chancellor further ruled that no other documents, items, exhibits, or pleadings shall be included in the record for consideration on appeal. Additionally, the Chancellor ruled that the Chancery Court would not oppose an interlocutory appeal and would stay the proceedings until an interlocutory appeal was filed pursuant to MRAP Rule 5. The Chancellor's Order Overruling the Motion to Adopt Attorney's Examination of Record and Proposed Corrections to Record filed on January 19, 2010, is the order which Ginny Watkins seeks to overturn in this interlocutory appeal. (RE 497-498, CP 496)

On January 20, 2010, Ginny Watkins, through counsel, filed a Petition for Permission to file this Interlocutory Appeal. This Court granted the petition in its order dated on February 17, 2010. (RE 499) It should be noted here that at the

time of the filing of the petition to initiate this interlocutory appeal, the undersigned counsel has still not received *any* clerk's notice of completion under MRAP Rule 11(d) (2) and still has not been notified *in writing* by the Rankin County Chancery Court Clerk that *any* record had been filed in any manner or that a briefing schedule has been established in the cause below. (RE 465-492)

SUMMARY OF THE ARGUMENT

In a possible case of first impression with this Court, the Appellant, Ginny Watkins, asserts in this interlocutory appeal that the Chancellor below misinterpreted Section 73-15-31 (10) of the Mississippi Code of 1972, as to what may be considered the record in a Chancery Court review of the ruling of the Mississippi Board of Nursing. Through counsel, Ginny Watkins argues in this Brief of the Appellant that the January 19, 2010, Order Overruling Motion to Adopt Attorney's Examination of Record and Proposed Corrections to the Record in the Rankin County Chancery Court should be reversed and vacated due to this misinterpretation of the statute.

As the Appellant, it is argued here that Ginny Watkins had the responsibility to insure that the record contained all of the materials needed for appellate review for the Chancery Court appeal. Despite taking the proper steps under MRAP Rules 10 (b) (5), the Chancery Clerk and the Board's attorney proceeded improperly under the rules to create confusion as to what the record was to contain on appeal.

In this appeal, Ginny Watkins claims that the Chancellor below committed error when the record on appeal was restricted to the transcript of the appeal hearing and that no other documents or pleadings would be considered to be a part of the record. This ruling is contrary to the language of Section 73-15-31 (10) of the Mississippi Code of 1972 which includes the transcript, but does not restrict the record to any other documents related to pre or post hearing actions taken by the Board.

Ginny Watkins claims that the record on appeal for *any* administrative agency should contain any and all documents and/or pleadings filed from the time the action with the agency began until the time a person files an appeal with

a higher court. To do less would be an injustice to administrative appeals in this state.

ARGUMENT

ISSUE ONE: THE CHANCERY COURT COMMITTED ERROR IN FINDING THAT THE RECORD IN THIS CAUSE SHOULD BE LIMITED TO THE EVIDENTIARY HEARING TRANSCRIPT OF THE MISSISSIPPI BOARD OF NURSING HEARING PANEL

The sole issue of this interlocutory appeal is the content of the record in an appeal from the decision of the Mississippi Board of Nursing to Rankin County Chancery Court. The Chancellor below ruled that only the transcript of the evidentiary hearing of Ginny Watkins before the Board should constitute the record on appeal. Ginny Watkins, through counsel argues here that the record should include any and all pre and post-hearing documents and pleadings including agency appeal briefs and documents that reflect the unusual steps the Board followed in the appeal of the panel's decision and orders issued after the hearing.

Standard of Review

In examining this interlocutory appeal, this Court may "address all matters as may appear in the interests of justice and economy." *See* *McDaniel v. Ritter*, 556 So.2d 303, 306 (Miss. 1989). Further, this Court is not limited by questions certified and may decide this case for the general importance in the administration of justice that needs immediate resolution. This standard of interlocutory review extends to administrative disciplinary rules. *See* *State Oil & Gas Board v. McGowan*, 542 So.2d 244, 246 (Miss. 1989).

Since this cause is based on the decision by the Chancellor as to what should comprise the record in this administrative agency appeal, this Court "will not disturb the factual findings of a chancellor when supported by substantial

evidence unless the Court can say with reasonable certainty that the chancellor abused his discretion, was manifestly wrong, clearly erroneous or applied an erroneous legal standard. When reviewing questions of law, this Court employs a de novo standard of review and will only reverse for an erroneous interpretation or application of law." *See* Powers v. Tiebauer, 939 So.2d 749, 752 (Miss. 2005)

As this appeal also involves the decision of an administrative agency, it is important to note here that an agency's conclusions must remain undisturbed unless the agency's order: (1) is not supported by substantial evidence; (2) is arbitrary or capricious; (3) is beyond the scope or power granted to the agency; or (4) violates one's constitutional rights. *See* P.E.R.S. v. Shurden, 822 So.2d 258, 263 (Miss. 2002); P.E.R.S. v. Marquez, 774 So.2d 421, 425 (Miss. 2000).[1] This standard of review comes into play during the argument contained in this brief related to the contents of the record.

Appellate Record Procedures

It is longstanding procedural law that the Appellant has the duty to arrange for the preparation of the record in appeals in this state at all levels of court. As the appealing party, the Appellant "has the duty to see that the record contains all data essential to understanding any presentation of materials relied upon for reversal." *See* Shelton v. Kindred, 279 So.2d 642 (Miss. 1973). The Mississippi Court of Appeals has held: "Facts asserted to exist must and ought to be

[1] See also: Mississippi Gaming Commission v. Board of Education, 691 So.2d 452, 458 (Miss. 1997); Ladnier v. Shoney's Inn, 751 So.2d 1101 (Miss.App. 1999); Mississippi Real Estate Commission v. Hennessee, 672 So.2d 1209, 1214 (Miss. 1996); Montalvo v. Mississippi State Board of Medical Licensure, 671 So.2d 53, 55-56 (Miss. 1998); and Mississippi State Board of Psychological Examiners v. Hosford, 508 So.2d 1049, 1054 (Miss. 1987).

definitely proved and placed before us by a record certified by law; otherwise we cannot know them." *See* Burton v. Blount, 981 So.2d 299 (Miss. 2007).[2]

This Court, in *Pratt v. Sessums*, 989 So.2d 308 (Miss. 2008) stated that: "We cannot consider evidence that is not in the record." Interestingly enough, in *Pratt*, both parties certified a record to this Court that failed to provide the pleadings which were the heart of the appellate issue. This Court added the following:

> **This decision should serve as notice to the Bar that failure to properly review and certify the appellate record as required by the Mississippi Rule of Appellate Procedure 10 (b)(5) is a serious offense, which this Court encounters far too often. *See Miller v. R. B. Wall Oil Co.*, 970 So.2d 127, 130-31 (Miss. 2007). Greater attention to detail and compliance with all rules of procedure are expected of all attorneys practicing in this state. Failure to properly review and certify the record is inexcusable—we expect better from *pro se* litigants.**
>
> **(*Pratt*, at p. 310)**

Rule 11 (d) (2) of the Mississippi Rules of Appellate Procedure (MRAP) states as follows:

> ***Transmission of Record.* Upon receipt of the court reporter transcript, the clerk *shall* then execute a certificate of compliance with this Rule and serve notice of completion on the parties and on the clerk of the Supreme Court. At the end of the time prescribed by Rule 10 (b) (5), the clerk shall immediately deliver the record to the Supreme Court. (Emphasis added.)**

MRAP Rule 10 (b) (5) provides as follows:

> ***Attorney's Examination and Proposed Corrections.***
> **For fourteen (14) days after service of the clerk's notice of completion under Rule 11(d) (2), the appellant shall have use of the record for**

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[2] **In *Pennington v. Dillard Supply, Inc.*, 858 So.2d 902, 903 (Miss.App. 2003), the Court of Appeals stated that "the record on appeal must show such portions of the record of the trial court as are necessary for a consideration of the questions presented." Further, the "record on appeal must affirmatively show that the point complained of was presented to and determined by the trial court's ruling to be adverse to the appellant." (*Pennington*, at p. 903-904)**

examination. On or before the expiration of that period, appellant's counsel shall deliver or mail the record to one firm or attorney representing the appellee, and shall append to the record (i) a written statement of any proposed corrections to record (ii) a certificate that the attorney has carefully examined the record and that with the proposed corrections, if any, it is correct and complete, and (iii) a certificate of service. Counsel for the appellee shall examine the record and return it to the trial court clerk within fourteen (14) days after service, and shall append to the record (i) a written statement of any proposed corrections to the record (ii) a certificate that the attorney has carefully examined the record and that with the proposed corrections, if any, it is correct and complete, and (iii) a certificate of service. Corrections as to which counsel for all parties agree in writing shall be deemed made by stipulation. If the parties propose corrections to the record, but do not agree on the corrections, the trial court clerk shall forthwith deliver the record with proposed corrections to the trial judge. The trial judge shall promptly determine which corrections, if any, are proper, enter an order under Rule 10(e), and return the record to the court reporter or the trial court clerk who shall within seven (7) days make corrections directed by the order.

Even though the proper notifications by the Rankin County Chancery Court Clerk *had not been received* by the undersigned counsel pursuant to MRAP Rule 10 (b) (5) or Rule 11 (d) (2), the Attorney's Examination and Proposed Corrections were filed by Ginny Watkins in response to the Board's Response to Designation of Record and Objections. (RE 19-32, RE 16-18) This response by the Board was prematurely filed on July 10, 2009, shortly after the court reporter filed a transcript, *but before* any notification was sent out to any of the parties by the Rankin County Chancery Court Clerk. Again, as of the time of the filing of this brief, the undersigned attorney has not been notified *in writing* by the clerk that *any* record has been filed in any manner or than any briefing schedule has been established in this cause.

The proper procedure to establish the appellate record is outlined in *Miller v. R. B. Wall Oil Co.*, 970 So.2d 127, 130-31 (Miss. 2007), as cited in *Pratt* above. In

Miller, the appellant was ordered to supplement the record with all documents designated, but not included, in the appellate record.

Put simply, the procedure to establish the record on appeal is as follows:

(a) Clerk serves notice of completion or record and appealing attorney has 14 days to examine the record;

(b) Before the 14 days expires, the appealing attorney delivers or mails the record to the opposing attorney along with a written statement of proposed corrections to the record, a certificate of examination, and a certificate of service;

(c) The opposing attorney must then examine the record and return it to the clerk within 14 days with a statement of proposed corrections, a certificate of examination, and a certificate of service;

(d) Corrections agreed upon by both parties are deemed to be made by stipulation;

(e) If there is no agreement as to the proposed corrections, the clerk delivers the record to the trial judge with proposed corrections;

(f) The trial judge then determines which corrections are proper and enters and order under MRAP Rule 10 (e) and the record is returned to the court reporter or the clerk who shall make corrections directed by the order within 7 days.

See MRAP Rule 10 (b) (5).

In this cause, the undersigned counsel strictly followed MRAP 10 (b)(5) by including all documents and items which should be included in the record even

though there was no clerk certification and the Board prematurely and improperly filed an objection to the record content. The actions of the clerk in failing to certify and the opposite party are curious and inexplicable. The Response to Designation of Record and Objections filed on July 10, 2009, coupled with the mysterious "filing/non-filing" of the record was not proper.

Instead of following this Court's rules laid out specifically for appellate procedure, the Board, through counsel, took it upon itself to cause chaos and confusion prompting the filing by the undersigned counsel of voluminous and additional unnecessary legal paperwork to clarify what should be included in the record in this Chancery Court appeal. Counsel below took painstaking steps to point out to the Chancellor below what the record should contain and the Chancellor wholly rejected the inclusion of key post-hearing documents and pleadings that should be included for appellate review.

Indeed, the undersigned counsel was forced to induce the proper procedures on the clerk and opposite party by filing the Attorney's Examination and Proposed Corrections on July 30, 2009 (RE 19-464), a Memorandum Brief in support of that Attorney's Examination on September 10, 2009 (RE 465-492), and, finally, a motion to the Chancellor to adopt the Attorney's Examination and Proposed Corrections on December 15, 2009. (RE 493-496) This is simply not how the procedure should work.

Record Content

Section 73-15-31 (10) of the Mississippi Code of 1972 provides in part as follows:

> **The right to appeal from the action of the board in affirming the denial, revocation, suspension or refusal to renew any license issued by the board, or revoking or suspending any privilege to practice, or fining or otherwise disciplining of any person practicing as a registered nurse or a licensed practical nurse, is granted. *Such appeal shall be to the chancery court of the county of the residence of the licensee on the record made, including a verbatim transcript of the testimony at the hearing*.**
>
> **(Emphasis added.)**

The statute clearly indicates that the appeal shall be "on the record made." Nothing in the statute defines precisely what the "record made" should consist of in any subsequent appeal. Further, the use of the word "including" indicates that more items other than the transcript may be a part of the record on appeal. Based on research as to the definition of the content of a record on appeal from and administrative agency to a higher Mississippi Court, this may be a case of first impression with this Court.

It is strongly argued here that the "record made" includes any and all documents and pleadings filed with the Board from the time the action was initiated by Ginny Watkins to the time of the filing of a notice of appeal with the Chancery Court. This record would naturally include the transcript of the appeal hearing, but it would also include all pre and post hearing pleadings and documents filed with the Board.

The Board stated in its Response to Designation of Record and Objections filed on July 10, 2009, that the "Appellee caused to be filed with the Clerk" exhibits identified and incorporated within the transcripts. (RE 16-18) In fact, the only items actually stamped "filed" by the Board in this cause was the appeal hearing transcript filed by the court reporter and the Board's response. As noted

above, the Board's attorney delivered a set of documents to the clerk's office but strangely instructed the clerk to not stamp file the documents.

Additionally, the Board states that they received a request to produce certain documents that they claim are extraneous to the records and exhibits contained in the transcripts. The Board makes a vague and odd statement in its Response that Ginny or her attorney should file a Public Records request pursuant to Section 25-61-1 of the Mississippi Code of 1972, as amended. The undersigned could only interpret this unusually pled statement as dealing with a request for the minutes of the Board related to the appeals heard in this cause.

The undersigned counsel is merely trying to include everything related to this cause into the record for appellate review and the minutes of a Board meeting that deal with Ginny Watkins is not an unreasonable request under the law. In fact, the only way a Board can speak to the matter is through its minutes, hearings conducted, and pleadings filed. *See* *Thompson v. Jones County Cmty. Hosp.*, 352 So.2d 795, 796 (Miss. 1977).

Besides the minutes request, counsel speculates that the Board is objecting to the inclusion of pleadings, briefs, and affidavits filed post hearing with the Board below. In its unusual and improper Response, the Board did not specify in any manner which items the Board is voicing an objection over with the exception of a vague referral to "certain documents." Further, the concept that a document not used at a Board hearing cannot be included in a record is unreasonable and definitely under the category of arbitrary, capricious, and discriminatory. If documents outside a hearing were prohibited from being a part

of the record, then how does one appeal any order or finding issued by the Board after a hearing has been conducted?

Since the July 26, 2007, administrative appeal hearing, the following documents were filed with and by the Board: 2 appeal briefs, 2 final orders, 1 amended order, 2 orders related to motions, 1 *nunc pro tunc* final order, 2 sets of appeal documents, 2 stipulations, 2 notices, a motion to clarify and suspend proceedings, a motion to reconsider and reopen record, and 1 affidavit by Ginny Watkins' counsel. All of these documents reflect actions taken by the Board that must be placed in appellate review; yet, the Chancellor has decreed that only the transcript of the hearing can be made a part of the record. In view of the flexibility exhibited by other agencies in comprising appellate records (i.e. worker's compensation cases), this ruling is unacceptable, erroneous, and contrary to established law where the burden is on the appellant to formulate the appellate record.

In *Herring Gas v. MS. Employment Sec. Com'n*, 944 So.2d 943, 947-948 (Miss.App. 2006) the Court of Appeals made the following observation regarding the bending of procedural rules with the administrative agency as follows:

> **Applicable here is that once a discretionary rule is established, an agency may allow reasonable "procedural indulgences." The Workers Compensation Commission could allow a claimant to reopen a case in order that a second deposition be entered into evidence by the claimant's doctor:**
>
> > **....The Commission is an administrative agency, not a court. It has broad discretionary authority to establish procedures for the administration of compensation claims. *It has like authority to relax and import flexibility to those procedures where in its judgment and effect its charge* under the Mississippi Workers' Compensation act. It is a rare day when we will reverse the Commission for an action taken in the implementation and enforcement of its own procedural rules. Today is not such a day.**

Delta Drilling Co. v. Cannette, 489 So.2d 1378, 1380-81 (Miss. 1986) (emphasis added).

(*Herring Gas*, at p. 948)

The Chancellor's strict interpretation of Section 73-11-31 (10) of the Mississippi Code of 1972, as amended, cannot stand. The statute simply does not limit the record to the transcript of the agency hearing. The transcript is the one item that is absolutely required, but, in no way, does this statute state that no other documents, pleadings, or items may be considered part of the record.

With this interlocutory appeal at hand, this Court has the opportunity to clarify what exactly a record consists of in an administrative agency action that is being appealed to either Circuit or Chancery Court. There is clearly a discrepancy in interpreting the law in these matters, for example, in a worker's compensation case, anything may be considered on appeal including a subsequent motion for rehearing or reconsideration. The Mississippi Board of Nursing claims the record can only contain a hearing transcript, but the statute apparently does not restrict the record to the transcript alone.

Ginny Watkins, through counsel, based on other decisions of this Court cited herein, insists that the record in this case should contain any and all documents from the time of the agency action to the time of the filing of the notice of appeal with the Chancery Court. Inclusion of certain documents that were filed post hearing is one of the only ways that a showing of arbitrary, capricious, and discriminatory action by the administrative agency may be shown on appeal.

CONCLUSION

With a decision in this interlocutory appeal, this Court can define--once and for all--exactly what documents or items may be considered to be the record in an appeal from a Mississippi administrative agency to a higher court. Exactly what may comprise a record in an administrative agency appeal will clear up any and all confusion that may exist in the legal community and will be instructive to attorneys and administrative agencies involved in handling future appeals of this type. Defining the issue of what may be the record in an administrative agency appeal is of general importance in the administration of justice.

The Appellant, Ginny Watkins, hereby argues that the record in an administrative agency appeal should consist of each and every document related to the matter from the time the case before the agency began until the filing of a notice of appeal in a higher court. This would also include any post-hearing pleadings or documents of all sorts. In this way, the higher court would have full knowledge of every aspect of what happened on the administrative level and this would add to a better understanding of the nature of the appeal.

By limiting the record in this cause to the transcript of the hearing before the Board of Nursing panel, the Chancery Court below committed an error of law in interpreting the statute. The post-hearing documents and pleadings are crucial to the understanding of the appeal of the Appellant, Ginny Watkins, in showing that the Board acted in an arbitrary, capricious, or discriminatory manner.

The Appellant, Ginny Watkins, through counsel, therefore respectfully requests that this Court overrule and vacate the Order Overruling Motion to Adopt Attorney's Examination of Record and Proposed Corrections to the Record filed in Rankin County Chancery Court on January 19, 2010. The Appellant, Ginny Watkins, further asks this Court to order that the record in this matter shall

include any and all pre and post-hearing documents and pleadings filed with the Mississippi Board of Nursing in this cause.

Respectfully Submitted,

STEPHEN L. BEACH, III
ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE

I, Stephen L. Beach, III, Attorney of Record for Ginny Watkins, Appellant, do hereby certify that I have this date mailed, by United States Mail, postage fully prepaid, a true and correct copy of the above and foregoing Brief of the Appellant to the following persons:

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This, the 2nd day of June, 2010.

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