A Primer on Alabama Administrative Appeals and Judicial Deference

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Challenging or defending the decision of an Alabama administrative agency involves unique procedures, theories and strategies often not present in standard litigation. While there are many other aspects of Alabama appellate jurisprudence in the administrative law context worthy of discussion, this article is intended to present a quick overview of the main topics practitioners should keep in mind when engaged in judicial review of an administrative agency decision.

I. The Purpose of Administrative Agencies

Administrative agencies are governmental entities typically created by statute[1] established to exercise regulatory "expertise in a specific area."[2] For example, where the legislature enacts a statute covering "highly technical, specialized interstitial matter[s],"[3] it may delegate to a specialized administrative agency the power to make the required findings, rules and rulings necessary to implement the statute.[4] In doing so, the agency is intended to have "specialized competence in the field of operation entrusted to it,"[5] and is expected to apply not just its expertise, but also its ever-increasing experience when making findings or issuing decisions.

Understanding the purpose and powers of administrative agencies is important because, as discussed in more detail below, such an understanding is key to advancing or defending against a judicial challenge to an agency's decision–and especially to navigating the deference given to agency interpretations of governing statutes and regulations.

II. Appellate Procedure

Appeals from decisions of administrative agencies are often subject to special rules of procedure. "A fundamental concept of judicial review of administrative action is that it is a limited review, delineated by statute and court-established standards relating to the nature of the issues or questions open to judicial review, or to the particular method or means by which review can be had."[6] Ultimately, by statute, the Alabama Court of Civil Appeals has jurisdiction to hear appeals stemming from decisions of administrative agencies,[7] and further review by the Alabama Supreme Court would be discretionary by way of the writ of certiorari. However, the method by which an appeal from an administrative agency is taken *prior* to arriving at the court of civil appeals can differ substantially.

A. Early practice

Historically, appellate review of administrative decisions was available through the common law writ of certiorari (barring some express statutory provision allowing an appeal by another means, such as by mandamus[8]). This writ was first reviewed by the circuit court acting in an appellate capacity, and then by the appellate courts. In such a circumstance, review was limited in a manner consistent with the nature of certiorari as an extraordinary remedy:

> [C]ourts will issue certiorari to make a limited review of the quasi-judicial acts of administrative boards and officers. That limited power is to determine whether the acts in question were supported by any substantial evidence, or, otherwise stated, whether the findings and conclusions are contrary to the uncontradicted evidence, or whether there was an improper application of the findings viewed in a legal sense.[9]

This standard was in many respects incorporated by the legislature in the Alabama Administrative Procedure Act.[10]

B. The Alabama Administrative Procedure Act

Enacted in 1981,[11] the Alabama Administrative Procedure Act ("AAPA")[12] serves as the default set of procedural rules for challenging administrative agency decisions, among other things (such as providing the parameters for agency rulemaking, etc.). The AAPA was based upon the Revised Model State Administrative Procedure Act, a uniform model statute promulgated by the Uniform Law Commission (also known as the National Conference of Commissioners on Uniform State Laws).[13] As expressly stated by the legislature, the AAPA was "intended to provide a minimum procedural code for the operation of all state agencies when they take action affecting the rights and duties of the public,"[14] and is to be "construed broadly to effectuate its purposes."[15] The AAPA applies to "[e]very state agency having express statutory authority to promulgate rules and regulations,"[16] but does not govern "agencies whose rules or administrative decisions are subject to approval by the Supreme Court of Alabama and the Department of Insurance of the State of Alabama."[17]

With regard to appeals from agency decisions, the AAPA is intended "[t]o simplify the process of judicial review of agency action as well as increase its ease and availability."[18] The AAPA's general procedure for obtaining judicial review of agency decisions is set forth in *Ala. Code* 1975, § 41-22-20, which provides, among other things, for a deferential review akin to the historical practice (unless by separate statute the legislature has provided for *de novo* review):

> Except where judicial review is by trial de novo, the agency order shall be taken as prima facie just and reasonable and the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact, except where otherwise authorized by statute. The court may affirm the agency action or remand the case to the agency for taking additional testimony and evidence or for further proceedings. The court may reverse or modify the decision or grant other appropriate relief from the agency action, equitable or legal, including declaratory relief, if the court finds that the agency action is due to be set aside or modified under standards set forth in appeal or review statutes applicable to that agency or if substantial rights of the petitioner have been prejudiced because the agency action is any one or more of the following:

(1) In violation of constitutional or statutory provisions;

(2) In excess of the statutory authority of the agency;

(3) In violation of any pertinent agency rule;

(4) Made upon unlawful procedure;

(5) Affected by other error of law;

(6) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or

(7) Unreasonable, arbitrary or capricious, or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.[19]

C. Special provisions providing for judicial review

"Nothing in the [AAPA], however, relieves agencies of the duty to comply with additional procedural requirements otherwise established by law."[20] And, in fact, the legislature has, at times, created additional, unique avenues of judicial review for decisions of particular administrative agencies.

One example would be found in appeals from final tax orders issued by the Alabama Department of Revenue, a procedure that has undergone several revisions over the years. Under the original form of the Alabama Taxpayers' Bill of Rights and Uniform Revenue Procedures Act ("TBOR"),[21] enacted in 1992, judicial review of certain final determinations of the Department of Revenue was obtained through filing of a notice of appeal in circuit court or in the department's administrative law division (which was then followed by an appeal to circuit court),[22] with further appellate review as of right in the Alabama Court of Civil Appeals. However, in 2014, the legislature abolished the department's ALD and created the Alabama Tax Tribunal,[23] a three-person tribunal "separate from and independent of the authority of the Commissioner of Revenue and the Department of Revenue."[24] The Alabama Tax Tribunal is expressly not "subject to the declaratory judgment, declaratory ruling, or contested case provisions of the Alabama Administrative Procedure Act."[25] Under the new structure, appeals from final orders of the Department of Revenue can still be filed in circuit court, but they can also be heard before the independent tribunal.[26]

Another example is appeals from agencies wherein the legislature has removed the circuit courts' role altogether, and has directed that any appeal will go directly to the Alabama Court of Civil Appeals. This is true with regard to, for example, appeals from disciplinary decisions of the Alabama Board of Medical Examiners[27] and from the state Health Planning and Development Agency concerning the issuance of certificates of need.[28] In such appeals, the administrative record is compiled by the agency and transmitted directly to the court of civil appeals as the record on appeal.[29]

A word of caution: where the legislature has provided a specific statutory avenue of appeal, one should assume that that avenue provides the sole appellate remedy and must be strictly followed to preserve one's appellate rights. "'Appeals from decisions of administrative agencies are statutory, and the time periods provided for the filing of notice of appeals and petitions must be strictly observed,' on pain of dismissal."[30]

III. Standards of Judicial Review of Administrative Agency Decisions

As it is in any appeal, determining and applying the applicable standard of review in the appeal of a decision of an administrative agency is crucial. Depending on the type of agency decision at issue, that standard of review can vary.

A. True "trial de novo"

Some statutes direct that judicial review of an agency decision will be by "trial *de novo*." Under this standard, the parties would essentially be allowed to start completely from scratch–from a true "blank slate." The reviewing court will attach no weight or presumption of correctness to the agency's decision and the reviewing court can take evidence (even evidence not submitted before the agency), hear new witnesses, etc.[31] "Alabama cases have consistently held that a trial de novo means an entirely new trial, as if no trial had ever been had, and just as if it had originated in the circuit court. A trial de novo ... means trying anew the matters involved in the original hearing as if they had not been heard before and as if no decision had been previously entered."[32]

Some examples of statutory language providing for judicial review by true trial de novo include:

- Appeals from decisions of the Commissioner of Agriculture and Industries regarding licenses for application of pesticides ("The court shall have jurisdiction to affirm, set aside or modify the action of the commissioner and the board, and such proceedings in the circuit court shall determine by trial de novo whether the applicant is entitled to the license under the requirements of this article.");[33]
- Appeals from decisions of the Board of Zoning Adjustment ("In case of such appeal such board shall cause a transcript of the proceedings in the action to be certified to the court to which the appeal is taken, and the action in such court shall be tried de novo.");[34] and
- Appeals from decisions of the Department of Public Health concerning food safety permitting ("Judicial review shall be by trial de novo in circuit court in accordance with provisions of the Alabama Administrative Procedure Act...").[35]

In these situations, a reviewing court commits reversible error if it fails to hold a trial *de novo* and applies a higher procedural standard–such as determining instead only whether the agency's action was "arbitrary and capricious."[36]

B. "Trial de novo, but the agency decision is prima facie correct"

Some administrative appeal provisions direct that judicial review is to be by trial *de novo* in a sense, but not in the pure "blank slate" sense as discussed above. Instead, as in the case of appeals from decisions of the Alabama Tax Tribunal for example, the administrative agency's decision is to be considered "prima facie correct":

> The appeal to circuit court from a final or other appealable order issued by the Alabama Tax Tribunal shall be a trial *de novo*, except that the order shall be presumed prima facie correct and the burden shall be on the appealing party to prove otherwise. The circuit court shall hear the case by its own rules and shall decide all questions of fact and law. The administrative record and transcript shall be transmitted to the reviewing court as provided herein and shall be admitted into evidence in the trial de novo, subject to the rights of either party to object to any testimony or evidence in the administrative record or transcript. With the consent of all parties, judicial review may be on the administrative record and transcript. The circuit court shall affirm, modify or reverse the order of the Alabama Tax Tribunal, with or without remanding the case for further hearing, as justice may require.[37]

This means that the agency decision begins with a substantive presumption of correctness that can be relied upon and advanced by the agency and which must be overcome by the challenger. Procedurally, however, that challenge is not limited to the administrative record and can proceed with the taking of new evidence as in a standard *de novo* trial.[38]

C. No "trial de novo"

With regard to other agency decisions, however, the legislature has directed that judicial review is not to be *de novo* in any sense. In such situations, no new evidence may be heard (with the possible exception of arguments touching on fundamental due process rights, as discussed below), the review is limited to the administrative record, and reversal of the agency decision is possible only for certain circumscribed reasons. For example, judicial review of decisions of the state Oil and Gas Board is governed by such a provision:

> Any interested person aggrieved by any rule, regulation or order made or promulgated by the board under this article and who may be dissatisfied therewith shall, within 30 days from the date said order, rule or regulation was promulgated, have the right, regardless of the amount involved, to institute a civil action by filing a complaint in the circuit court of the county in which all or part of the aggrieved person's property affected by any such rule, regulation or order is situated to test the validity of said rule, regulation or order promulgated by the board. Such civil action shall be advanced for trial and be determined as expeditiously as feasible, and no postponement or continuance thereof shall be granted except for reasons deemed imperative by the court. In such trials, the validity of any rule, regulation or order made or promulgated under this article shall be deemed prima facie valid, and the court shall be limited in its consideration to a review of the record of the proceedings before the board, and no new or additional evidence shall be received.
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> The reviewing court shall limit its consideration to the following:

(1) Whether the rule, regulation or order is constitutional;

(2) Whether the rule, regulation or order was without or in excess of jurisdiction;

(3) Whether the rule, regulation or order was procured by fraud;

(4) Whether the rule, regulation or order is reasonable; and

(5) Whether the rule, regulation or order is unsupported by the evidence.[39]

When the legislature has set forth specific grounds limiting judicial review in this manner, a reviewing court has no authority to reverse an agency decision on a different ground.[40]

However, regardless of the type of review, a party claiming that the agency's decision amounted to a denial of due process will be allowed to submit evidence outside the administrative record in support of that claim.[41] Indeed, the AAPA specifically provides that, even where the review is not *de novo*, "evidence may be introduced in the reviewing court as to fraud or misconduct of some person engaged in the administration of the agency or procedural irregularities before the agency not shown in the record and the affecting order, ruling, or award from which review is sought, and proof thereon may be taken in the reviewing court."[42]

D. Deference to agency interpretations of law

In certain circumstances, courts will defer to an administrative agency's interpretation of statutes and regulations. In the federal courts, this doctrine of deference has developed over time in response to the rise of the administrative state. Understanding the basic types of deference developed in the federal courts can be helpful in questions arising in Alabama state courts.

1. Deference in the federal courts

The governing standard of deference in the federal courts comes from *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). Under "*Chevron* deference," a reviewing court first asks "whether Congress has directly spoken to the precise question at issue" and "[i]f the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress."[43] In other words, deference to an agency interpretation is not even a relevant issue where the meaning of the statute is clear.[44] However, if the reviewing court determines that the statute at issue "is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute."[45] "In ascertaining whether the agency's interpretation is a permissible construction of the language, a court must look to the structure and language of the statute as a whole."[46]

"*Chevron* deference"–determined through an analysis of the above test, often affectionately referred to as the "*Chevron* two-step"–is typically applied to formal agency interpretations of statutes that have the force of law (for example, through a formal regulation). Agency interpretations that do not have the force of law, however, can qualify for the weaker form of deference set forth in *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944). As currently applied, under "*Skidmore* deference" "[i]nterpretations such as those in opinion letters–like interpretations contained in policy statements, agency manuals, and enforcement guidelines, all of which lack the force of law–do not warrant *Chevron*-style deference."[47] Instead, such interpretations are "'entitled to respect' ... but only to the extent that those interpretations have the 'power to persuade.'"[48] Under *Skidmore*, such an administrative interpretation might be given some weight "depend[ing] upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control."[49]

Finally, an agency's interpretation *of its own regulations* is generally entitled to deference under the principles set forth in *Auer v. Robbins*, 519 U.S. 452 (1997), which was an application of the Supreme Court's decision in *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410 (1945). Under "*Auer/Seminole Rock* deference," an agency's interpretation of its own regulation has controlling weight unless it is "plainly erroneous or inconsistent with the regulation," or unless "there is reason to suspect that the agency's interpretation does not reflect the agency's fair and considered judgment."[50]

2. Deference in the Alabama courts

With regard to an agency's interpretation of statutes and regulations, Alabama courts have generally followed the "*Chevron* two-step" model.[51] That is, Alabama courts put a heavy focus on determining the plain

meaning of the statute or regulation at issue, and will consider deference to an agency interpretation only where the meaning of the statute is truly ambiguous:

> [A] reviewing court will accord an interpretation placed on a statute or an ordinance by an administrative agency charged with its enforcement great weight and deference. Notwithstanding this rule of construction, however, where the language of the statute or ordinance is plain, this Court will not blindly follow an administrative agency's interpretation but will interpret the statute to mean exactly what it says. Although a court should give deference to an agency's interpretation of an agency rule or a statute implemented by the agency, that deference has limits. When it appears that the agency's interpretation is unreasonable or unsupported by the law, deference is no longer due.[52]

Thus, the rule in Alabama is–as in the federal courts–no deference can be given to an agency interpretation that is directly contrary to the statute at issue. "An administrative agency cannot usurp legislative powers or contravene a statute."[53] "This is because an administrative board or agency is purely a creature of the legislature, and has only those powers conferred upon it by its creator."[54]

If the statute or regulation at issue is truly ambiguous, then the question becomes whether the agency's interpretation is at least one reasonable interpretation, although others might exist:

> It is settled that courts should give great weight to any reasonable construction of a regulatory statute adopted by the agency charged with the enforcement of that statute.
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> . . .
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> Under the formulation now familiar, when we confront an expert administrator's statutory exposition, we inquire first whether "the intent of Congress is clear" as to "the precise question at issue." *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984). If so, "that is the end of the matter." *Ibid.* But "if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." *Id.*, at 843, 104 S.Ct., at 2782. If the administrator's reading fills a gap or defines a term in a way that is reasonable in light of the legislature's revealed design, we give the administrator's judgment "controlling weight." *Id.*, at 844, 104 S.Ct., at 2782.[55]

In determining whether a statute is ambiguous–and thus whether any reference to an administrative agency's interpretation is even relevant–Alabama courts engage the established rules of statutory interpretation (or at least those rules that do not themselves depend on a finding of ambiguity).[56] These rules likewise apply to the interpretation of agency regulations. "'[T]he construction of administrative rules is governed by the same basic rules as those applicable to the construction of statutes; that is, we are bound to look to the plain meaning of the language used in the rule when construing it.'"[57]

Of course, it is axiomatic that ambiguity does not exist simply because the parties advance differing interpretations of a statute; that circumstance will virtually always exist in practice, but says little about whether there is one, or more than one, *objectively reasonable* interpretation of the statute.[58] Rather, a reviewing court always has a constitutionally-grounded obligation to use established rules of construction to determine whether a statute's meaning is clear or whether there is in fact more than one reasonable interpretation (thus creating a true "ambiguity").[59] As the Alabama Supreme Court explained when declining to defer to an interpretation of a zoning code provision in *Ex parte Chestnut*, 208 So. 3d 624 (Ala. 2016): "This is not a case where the agency's interpretation is reasonable, even though it may not appear as reasonable as some other interpretation. Here, the zoning-enforcement coordinator's interpretation contravenes the clear intent of Article 73.7.4. ... The deference given an administrative agency's interpretation of its own rule or regulation is not boundless."[60] Indeed, the Alabama Supreme Court and the Alabama Court of Civil Appeals have made clear that they will reverse an agency's interpretation that is contrary to the plain language of the statute, even where that interpretation has been applied by the agency over a number of years.[61]

Additionally, deference is not proper where an agency's interpretation of its governing statute actually expands its jurisdiction beyond the limits set forth in the statute. "Because an administrative agency may not expand its own jurisdiction by its interpretation of a statute (or by any other means), courts deciding whether to give deference to an agency's interpretation of a statute must first determine whether the agency's interpretation is operative

within the agency's particular sphere of statutory authority."[62] This "authority" analysis is somewhat similar to what has been referred to as "*Chevron* step zero," where the reviewing court asks whether the issue at hand is truly one that the legislature should be presumed to have desired agency interpretive control and influence, given that it concerns significant, fundamental policy-making.[63]

3. Asking the "why?"–what types of interpretations get deference?

Far too often, practitioners fail to use the doctrine of deference to their benefit–or, if they are attempting to overturn the decision of administrative agency, fail to properly navigate around deference–because they did not ask *why* deference should or should not apply to a certain agency interpretation. However, asking the "why" is actually quite important and can possibly turn the analysis of a case in one's favor.

As stated above, the basic justification for giving deference to an administrative agency's interpretation is the notion that the agency is an expert body in a particular regulated field, and has obtained real-world experience about what works and what does not through performing that regulatory activity. Accordingly, then, parties involved in an administrative appeal should always make sure that the statute at issue calls for, and the type of interpretation at issue is the type that actually utilizes and reflects, an exercise of the relevant expertise, experience and deliberation that was intended when the agency was created. If not, then deference might not be appropriate.

For example, take a statute that contains an express *limitation* on the authority or jurisdiction of the agency to do something. Asking the "why" in this circumstance could bolster an argument that deference might be lessened or improper.[64] Interpreting such a statutory limitation is more purely a judicial function that is by nature a guard against possible agency overreach, and tends to involve primarily an exercise of *judicial* expertise (i.e., in reading statutes).[65] Assuming a delegation of interpretive authority to an administrative agency as to a limiting or jurisdictional statute could therefore raise substantial separation of powers concerns.[66] Such a situation is quite different in nature from, for example, interpreting a statute setting forth factors as to whether there is truly a "need" for a new medical service in a particular area, which involves more of an exercise of the substantive, particularized expertise of the agency. It is more natural to believe that the legislature intended to use broad language concerning a matter truly within the agency's particular area of expertise, with the expectation that the agency will fill in the technical details.

Another reason to ask why deference should be applied concerns the type of administrative agency interpretation being offered. Is it a properly adopted, formal administrative rule or regulation construing a statutory provision? Is it an informal, perhaps purely internal agency position in a manual, handbook, letter, etc.?[67] Is it a position that has been consistently held[68] in various matters in various cases litigated cases for many years,[69] or is it a position being advanced for the first time in litigation?[70] The level of deference that is appropriate will likely change depending on how much actual and consistent expertise and experience is found to have been exercised in arriving at the interpretation at issue. As the United States Supreme Court has stated, "[t]he fair measure of deference to an agency administering its own statute has been understood to vary with circumstances, and courts have looked to the degree of the agency's care, its consistency, formality, and relative expertness, and to the persuasiveness of the agency's position."[71] Therefore, asking *why* deference is appropriate in a particular case–rather than simply jumping straight to generalized deference standards in the abstract–can help give practitioners avenues to argue for or against deference in that case.

4. *De novo* review and deference

One area of confusion concerns the application of deference where the judicial review in a circuit court proceeding is "trial *de novo*." Even in a "trial *de novo*" review, the agency's interpretation of relevant *provisions of law* is entitled to deference (where otherwise appropriate under the particular deference doctrine).

The same principle applies when a circuit court's ruling on an agency decision is then reviewed "*de novo*" by one of Alabama's appellate courts under this oft-cited standard: "This court reviews a circuit court's judgment as to an agency's decision without a presumption of correctness [i.e., *de novo*] because the circuit court is in no better position to review the agency's decision than is this court."[72] This does not mean that the appellate court always reviews the facts and the applicable regulations *as though it were the administrative agency*. Instead, in this context, "*de novo* review" by an appellate court means that when an appellate court is reviewing the circuit court's review of an agency decision, the appellate court gives no credence to the decision of the circuit court and instead

performs its own "*de novo*" application *of whatever deferential standards apply to the agency's findings and interpretations*.[73]

E. Review of Agency Fact Findings

Where the appeal of an administrative agency decision is not by trial *de novo*, the agency's factual findings arrive at the reviewing court with a heavy presumption of correctness.[74] A court may not "substitute its judgment for that of the administrative agency as fact-finder; the judiciary is required to give the agency's factual findings due deference."[75] This is true "even in cases where the testimony is generalized, the evidence is meager, and reasonable minds might differ as to the correct result."[76] "In no event is a reviewing court 'authorized to reweigh the evidence or to substitute its decisions as to the weight and credibility of the evidence for those of the agency.'"[77] As long as there is "substantial evidence" in the record to support the agency's fact findings–notwithstanding the existence of some contrary evidence–the findings will not be disturbed. In the administrative context, "substantial evidence" is "relevant evidence that a reasonable mind would view as sufficient to support the determination."[78]

Furthermore, "considering [an agency's] recognized expertise in [its] specialized area, the weight and significance of any given piece of evidence presented ... is left primarily to [the agency's] discretion."[79] Accordingly, for example, where an agency has heard relevant testimony from competing experts and has weighed one expert to be more convincing than the other, that "weighing" is going to be entitled to deference.[80] Or if a statute requires the agency to make a finding based on the balancing of certain statutory *factors*, unless the legislature expressly states that one or more factors has priority or is in fact a requirement (rather than a mere factor), the balancing of those factors–as to each of which the level of evidence will differ–is generally left to the agency, and not a reviewing court, to perform.[81]

Putting together these standards reveals the difficult–but not impossible–burden carried by a party seeking to challenge the factual findings of an administrative agency in a non-trial *de novo* appeal. In such appeals, "[r]egarding factual matters, a circuit court may reverse [the agency's] decision if the decision is '[c]learly erroneous in view of the reliable, probative, and substantial evidence of the whole record' or is '[u]nreasonable, arbitrary, or capricious.'"[82]

IV. Conclusion

Practitioners desiring to appeal the decision of an administrative agency should first examine the statutes governing the agency to determine whether the statutory framework contains a specific procedural provision governing judicial review of the agency decision. As discussed herein, many such statutes provide not only a particular procedure, but also an applicable time frame and a standard of review. (A potential appellant should also examine the regulations adopted by the agency concerning judicial review, which may contain more detail.[83]) If there is no governing statute specifically addressing judicial review of that agency's decisions, then the default provisions of the AAPA should be followed. Of course, in accord with one of the golden rules of appellate law–to be risk-averse–if there is any confusion concerning the proper avenue for seeking appellate review, a party should timely try multiple, alternative routes (such as through filing both under the AAPA and by way of common law writ of certiorari) to be safe.

After determining the proper procedure and timing, parties should evaluate whether the agency's decision can either be attacked or defended under the deferential standards discussed above. This evaluation should cover both the agency's factual findings and its legal interpretations. And, with regard to the latter, the focus should not simply be reciting abstract standards of deference, but also in being prepared to answer *why* deference should or should not be given to the particular interpretation at issue. ▲

Endnotes

1. Agencies can also be established by constitutional provision, by executive order, etc.
2. *City of Brundidge v. Alabama Dep't of Envtl. Mgmt.*, 218 So. 3d 798, 805 (Ala. Civ. App. 2016) (internal quotations omitted).
3. *Zuni Pub. Sch. Dist. No. 89 v. Dep't of Educ.*, 550 U.S. 81, 90 (2007).
4. *See Alabama Surface Min. Reclamation Comm'n v. Jolly*, 362 So. 2d 919, 920 (Ala. Civ. App. 1978) ("From this provision it may be seen that there is a general power of sub-delegation of its authorized acts and duties, except for specific limitation. There is ample authority in federal jurisdictions that there is nothing inherently wrong with the sub-delegation of power and authority by agencies created and empowered by legislative act to serve a public purpose.").
5. *Ex parte Chestnut*, 208 So. 3d 624, 640 (Ala. 2016). *See also Kids' Klub, Inc. v. State Dep't of Human Res.*, 874 So. 2d 1075, 1082 (Ala. Civ. App. 2003) (noting that an agency is tasked with regulating in a "field of competence that has been entrusted to the agency by the Alabama Legislature") (internal quotations omitted; emphasis added).
6. *Alabama State Tenure Comm'n v. Mountain Brook Bd. of Educ.*, 343 So. 2d 522, 524 (Ala. 1976).

7. Ala. Code 1975, § 12-3-10 ("The Court of Civil Appeals shall have exclusive jurisdiction of ... all appeals from administrative agencies other than the Alabama Public Service Commission....").

8. *Alabama State Tenure Comm'n*, 343 So. 2d at 524-25 (applying statute that allowed judicial review through mandamus).

9. *Baker v. Denniston-Boykin Co.*, 245 Ala. 407, 411, 17 So. 2d 148, 151 (1944); *see, e.g.*, *Stewart v. Hilyer*, 376 So. 2d 727, 729 (Ala. Civ. App. 1979) ("The circuit court exercises a limited function on certiorari to review the order of an administrative agency.").

10. *See Personnel Bd. v. King,* 456 So. 2d 80, 81-82 (Ala. Civ. App. 1984) (noting the parties' agreement that "the standard of review by the circuit court on certiorari is essentially the same as the standard of review set forth in the AAPA", and stating that "our task is to determine whether there was any legal evidence before the [agency] to support its findings. In making such determination it is not within this court's prerogative to pass upon the truthfulness of conflicting testimony or to substitute our judgment for that of the [agency].").

11. 1981 Ala. Acts 855.

12. Ala. Code 1975, 41-22-1 *et seq*.

13. *See generally* Uniform Law Commission website at *www.uniformlaws.org*; *see also Alabama Cellular Serv., Inc. v. Sizemore*, 565 So. 2d 199, 202 (Ala. 1990) ("[I]t is necessary to set out the history of the [AAPA]. The National Conference of Commissioners on Uniform State Laws first adopted a Model State Administrative Procedure Act in 1946; the National Conference followed with the Revised Model State Administrative Procedure Act in 1961. The National Conference later conducted a complete reexamination of the act, which took two years and resulted in their adoption of the Model State Administrative Procedure Act (1981).") (footnote omitted). Furthermore, parts of what became the AAPA were adopted (sometimes in modified form) from the federal APA or from the administrative procedural codes of other states, a fact which could help inform how the statute should be interpreted. For example, *see* Ala. Code 1975, § 41-22-2 cmt. ((("The first two paragraphs of this section are adopted from Iowa Code § 17A.1 (1976 Cum.Supp.).").

14. Ala. Code 1975, § 41-22-2(a); *see Alabama Cellular Serv., Inc. v. Sizemore*, 565 So. 2d 199, 202 (Ala. 1990) ("[T]he APA seeks to make the process of review of state agency actions fairer and more efficient, not to alter the substantive rights of a person affected by a rule."); *see also, e.g., Benton v. Alabama Bd. of Med. Examiners*, 467 So. 2d 234, 236 (Ala. 1985).

15. Ala. Code 1975, § 41-22-25; *see* Ala. Code 1975, § 41-22-2 cmt. ("Thus, it is the intent of this act that the specific purposes enumerated in this section shall be applied to the actions of all agencies not specifically exempted from the provisions of this act, and to the courts, in interpreting any ambiguity in the language of this act for the purpose of giving effect to the requirements of its sections.").

16. Ala. Code 1975, § 41-22-2(d).

17. Ala. Code 1975, § 41-22-2(e).

18. Ala. Code 1975, § 41-22-2(b)(7).

19. Ala. Code 1975, § 41-22-20(k). *See, e.g.*, *Benton*, 467 So. 2d at 236 ("Code 1975, § 41-22-20, sets out a process by which an aggrieved party may seek judicial review, in circuit court, of an agency's final decision or order.").

20. *Benton*, 467 So. 2d at 236.

21. Ala. Code 1975, § 40-2A-1 *et seq*.

22. *See* former Ala. Code 1975, § 40-2A-9(g) (repealed by 2014 Ala. Acts 146).

23. Ala. Code 1975, § 40-2B-1 *et seq*.; *see State Dep't of Rev. v. Coca-Cola Refreshments, U.S.A., Inc.*, 248 So. 3d 18, 20 n.2 (Ala. Civ. App. 2017) (noting that "the Alabama Legislature abolished the department's administrative-law division and created the Alabama Tax Tribunal, an executive-branch agency independent of the department, on October 1, 2014. Act No. 2014–146, Ala. Acts 2014").

24. Ala. Code 1975, § 40-2B-2(b).

25. Ala. Code 1975, § 40-2B-1.1.

26. Ala. Code 1975, § 40-2A-7(b)(5) and -7(c)(5) (current).

27. Ala. Code 1975, § 34-24-367 ("Notwithstanding any other provision of law to the contrary, any action commenced for the purpose of seeking judicial review of the administrative decisions of the Medical Licensure Commission, including writ of mandamus, or judicial review pursuant to the Alabama Administrative Procedure Act, Chapter 22 of Title 41, must be filed, commenced, and maintained in the Alabama Court of Civil Appeals.").

28. Ala. Code 1975, § 22-21-275(6) ("Any aggrieved party to a final decision of SHPDA may appeal the final decision of SHPDA to the Court of Civil Appeals.").

29. *See id.* ("Within 30 days after a notice of appeal is filed, SHPDA shall transmit the administrative record to the clerk, with the appealing party bearing the costs associated with the preparation and transmission of the record and transcript of the hearing and of giving notice to the parties of the transmittal. Upon the transmittal of the administrative record to the Court of Civil Appeals, the appeal shall proceed in accordance with the *Alabama Rules of Appellate Procedure*.").

30. *Brunson v. Alabama State Bd. of Med. Examiners*, 69 So. 3d 913, 914–15 (Ala. Civ. App. 2011) (quoting *Eitzen v. Medical Licensure Comm'n of Ala.*, 709 So. 2d 1239, 1240 (Ala. Civ. App. 1998)).

31. *See Benton*, 467 So. 2d at 236 (interpreting an earlier version of Ala. Code 1975, § 20-3-53, which provided for judicial review from the Alabama State Board of Medical Examiners, as required a true trial de novo: "We find that although this section is somewhat clumsily phrased, the clear intention of the legislature is to provide for a de novo hearing in its truest sense. The language of Code 1975, § 20-2-53, mandates the filing of the record and transcript of the Board's hearing in Montgomery County Circuit Court. However, in stark contrast to the Alabama Administrative Procedure Act, § 20-2-53 specifically authorizes the admission of any new or additional evidence. Furthermore, it stresses that original findings of fact and law are to be made within the trial court's discretion.").

32. *Petersen v. Woodland Homes of Huntsville, Inc.*, 959 So. 2d 135, 139 (Ala. Civ. App. 2006) (internal quotations and citations omitted).

33. Ala. Code 1975, § 2-27-54(b).

34. Ala. Code 1975, § 11-52-81.

35. Ala. Code 1975, § 20-1-33(e).

36. *See, e.g.*, *Benton*, 467 So. 2d at 237 ("[T]he trial court's order stating that the Board's ruling was not 'arbitrary or unreasonable' reveals that the trial court failed to hold a de novo review as required by Code 1975, § 20-2-53, but rather, merely chose to search the Board's decision for any abuse of discretion. The trial court's failure to apply the appropriate standard of review, in this instance, warrants reversal.").

37. Ala. Code 1975, § 40-2B-2(m)(4). *See also, e.g.*, Ala. Code 1975, § 2-10-32 (appeals from certain decisions of the state Board of Agriculture and Industries: "The matter shall be heard de novo in such court; provided, that the order of the board shall be presumed prima facie correct.").

38. *See* Ala. Code 1975, § 5-2A-82 (appeals from decisions of the Bureau of Loans: "Trial thereof shall be de novo, but on such hearing the act or order of the supervisor shall be prima facie correct and the burden shall be on the plaintiff to show that the bureau in issuing the order or in taking the action complained of was not justified. Any party to the proceeding may summon witnesses and compel their attendance as in criminal cases and may introduce evidence in addition to that relied upon by the bureau."); Ala. Code 1975, § 5-25-15(a) (appeals from decisions of the state Banking Department of Alabama: "The department's findings shall be prima facie correct, but the circuit court may hear such appeal according to its own rules and procedures, including the taking of additional testimony and staying the order. In the circuit court, the trial shall be de novo.").

39. Ala. Code 1975, § 9-17-15; *see Mize v. Exxon Corp.*, 640 F.2d 637, 640 (5th Cir. 1981) ("The judicial review provided by Alabama law is specifically limited to a consideration of the proceedings and evidence before the Board and is not a trial de novo."). *See also, e.g.*, Ala. Code 1975, § 27-2-32(e) (appeals from decisions of the Insurance Commissioner: "[T]he commissioner's decision or order shall be taken as prima facie just and reasonable. No new or additional evidence may be introduced in the circuit court except as to fraud or misconduct of some person engaged in the administration of this title and affecting the decision or order appealed from, but the court shall otherwise hear the case upon the certified record" and listing specific grounds for reversal).

40. *See, e.g., State Oil & Gas Bd. of Ala. v. Seaman Paper Co.*, 285 Ala. 725, 733, 235 So. 2d 860, 866 (1970) ("We lay aside as surplusage the conclusions of the trial court that Orders 65-28 and 66-5 did not fulfill and satisfy all of the terms and provisions of the Unitization Agreement relating to the enlargement of the Unit Area and that said orders were not in accordance with the law. Those are not among the grounds which the trial court is authorized to consider when reviewing a rule, regulation or order of the Board as provided in [the judicial review statute, now Ala. Code 1975, § 9-17-15].").

41. *See Ex parte King*, 364 So. 2d 318, 318 (Ala. 1978); *W.A.A. v. Board of Dental Examiners of Ala.*, 180 So. 3d 25, 28-30 (Ala. Civ. App. 2015) (discussing *King*).

42. Ala. Code 1975, § 41-22-20(i).

43. *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842–43 (1984) (footnotes omitted).

44. *See, e.g.*, *Michigan v. E.P.A.*, 135 S. Ct. 2699, 2707 (2015) ("*Chevron* directs courts to accept an agency's reasonable resolution of an ambiguity in a statute that the agency administers. Even under this deferential standard, however, agencies must operate within the bounds of reasonable interpretation.") (internal quotations and citation omitted); *National R.R. Passenger Corp. v. Boston & Maine Corp.*, 503 U.S. 407, 417-18 (1992) (deference can be given only when "the agency interpretation is not in conflict with the plain language of the statute," and "a reviewing court need not accept an interpretation which is unreasonable").

45. Chevron, 467 U.S. at 843.

46. *National R.R. Passenger Corp.*, 503 U.S. at 417; *see also, e.g.*, *Utility Air Reg. Grp. v. E.P.A.*, 134 S. Ct. 2427, 2442 (2014) ("[R]easonable statutory interpretation must account for both the specific context in which ... language is used and the broader context of the statute as a whole. A statutory provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme ... because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law.") (internal quotations and citations omitted).

47. *Christensen v. Harris County*, 529 U.S. 576, 587 (2000).

48. *Christensen*, 529 U.S. at 587 (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)); *see also, e.g.*, *United States v. Mead Corp.*, 533 U.S. 218, 227–28 (2001) (applying *Skidmore*).

49. *Mead Corp.*, 533 U.S. at 228 (quoting *Skidmore*, 323 U.S. at 140).

50. *Christopher v. SmithKline Beechman Corp.*, 567 U.S. 142, 155 (2012) (quoting *Auer v. Robbins*, 519 U.S. 452, 461-62 (1997)). "*Auer* deference" has been the subject of criticism–even from its author, Justice Scalia. *See, e.g., Perez v. Mortgage Bankers Ass'n*, 135 S. Ct. 1199, 1210-25 (2015) (special writings of Justices Alito, Scalia and Thomas discussing problems with *Auer*).

51. Of course, Alabama courts are not bound by federal deference precedent with regard to state agencies. Alabama's appellate courts have expressly followed *Chevron* and its progeny when analyzing decisions of *federal* agencies. *See, e.g.*, *Norfolk S. Ry. Co. v. Williams*, [Ms. 2160823, June 15, 2018] ___ So. 3d ___, 2018 WL 2995699, at *8–9 (Ala. Civ. App.).

52. *Chestnut*, 208 So. 3d at 640 (citations and internal quotations omitted); *see also Kids' Klub*, 874 So. 2d at 1092 ("An agency's interpretation of its own rule or regulation must stand if it is reasonable, even though it may not appear as reasonable as some other interpretation.") (internal quotations omitted).

53. *Ex parte Jones Mfg. Co.*, 589 So. 2d 208, 210 (Ala. 1991).

54. *Ex parte City of Florence*, 417 So. 2d 191, 193–94 (Ala. 1982) ("It is axiomatic that administrative rules and regulations must be consistent with the constitutional or statutory authority by which their promulgation is authorized. A regulation ... which operates to create a rule out of harmony with the statute, is a mere nullity.") (citations and internal quotations omitted).

55. *QCC, Inc. v. Hall*, 757 So. 2d 1115, 1119 (Ala. 2000) (internal quotations omitted).

56. *Chestnut*, 208 So. 3d at 640-42 (relying on expert's use of canons of construction to interpret provision contrary to agency).

57. *City of Mobile v. Lawley*, 246 So. 3d 147, 149–50 (Ala. Civ. App. 2017) (quoting *Brookwood Health Servs., Inc. v. State Health Planning & Dev. Agency*, 202 So. 3d 345, 351 (Ala. Civ. App. 2016)); *see also Alabama Medicaid Agency v. Beverly Enters.*, 521 So. 2d 1329, 1332 (Ala. Civ. App. 1987) ("The language used in an administrative regulation should be given its natural, plain, ordinary, and commonly understood meaning, just as language in a statute.").

58. *See, e.g.*, *Kershaw v. Kershaw*, 848 So. 2d 942, 951 (Ala. 2002) ("The simple fact that a writing is described by adversaries as unambiguous while each insists on a different interpretation does not render the writing ambiguous."); *Wayne J. Griffin Elec., Inc. v. Dunn Constr. Co.*, 622 So. 2d 314, 317 (Ala. 1993) ("The mere fact that the parties argue different constructions of the document does not force the conclusion that the disputed language is ambiguous. Rather, a document is unambiguous if only one reasonable meaning emerges.") (citations omitted); *In re American Home Mortg. Holdings, Inc.*, 637 F.3d 246, 256 (3rd Cir. 2011) ("The fact that the parties proffer different interpretations of the statutory language does not make the language ambiguous.").

59. *See Bama Budweiser of Montgomery, Inc. v. Anheuser-Busch, Inc.*, 783 So. 2d 792, 796 (Ala. 2000) ("A court, in construing a statute, is not limited to choosing among the statutory interpretations advocated by the parties. Instead, the court has a duty to construe the statute correctly, even if the correct construction is not one of the constructions advocated by the parties to the action.").

60. *Chestnut*, 208 So. 3d at 640-41(citation omitted).

61. *See, e.g.*, *Ex parte STV One Nineteen Senior Living, LLC*, 161 So. 3d 196, 207-12 (Ala. 2014) (rejecting agency interpretation of when issuance of "Emergency CON" was proper, and affirming *Daniel Sr. Living of Inverness I, LLC v. STV One Nineteen Sr. Living, LLC*, 161 So. 3d 187 (Ala. Civ. App. 2012)). *Accord, e.g.*, *Utility Air Reg. Grp.*, 134 S. Ct. at 2446 ("We are not willing to stand on the dock and wave goodbye as EPA embarks on this multiyear voyage of discovery. We reaffirm the core administrative-law principle that an agency may not rewrite clear statutory terms to suit its own sense of how the statute should operate.").

62. *Ex parte State Health Planning & Dev. Agency*, 855 So. 2d 1098, 1102 (Ala. 2002) (declining deference, and stating: "The traditional deference given an administrative agency's interpretation of a statute appropriately exists (1) when the agency is actually charged with

the enforcement of the statute and (2) when the interpretation does not exceed the agency's statutory authority (i.e., jurisdiction)."). *See, e.g.*, *Ex parte Bostick*, 211 So. 3d 825, 834–35 (Ala. 2016) ("The Board, a regulatory licensing entity, was simply not vested with the authority to determine a matter that is essentially a dispute regarding compensation between an employer and a former employee.").

63. *See, e.g.*, *King v. Burwell*, 135 S. Ct. 2480, 2488-89 (2015) (declining to apply *Chevron* deference to determination of the permissibility of subsidies on federal exchanges, stating: "Whether those credits are available on Federal Exchanges is thus a question of deep 'economic and political significance' that is central to this statutory scheme; had Congress wished to assign that question to an agency, it surely would have done so expressly. It is especially unlikely that Congress would have delegated this decision to the IRS, which has no expertise in crafting health insurance policy of this sort."); *Texas Dep't of Housing & Community Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507, 2515-26 (2015) (determining whether the FHA permits disparate impact claims without reference to *Chevron* deference or the Department of Housing and Urban Development's regulation interpreting the FHA to encompass disparate impact claims).

64. Of course, sometimes a statutory provision can be creatively framed as both a grant or a limitation (i.e., by arguing that an express grant of authority to do something is an express limit or prohibition on doing anything else). The validity of such an argument will depend on the particular statutory language at issue, and its context.

65. Indeed, while deference is generally given to agency interpretations of statutes implemented by that agency, one might ask whether an agency truly "implements" a statute limiting its own authority. *But see City of Arlington v. F.C.C.*, 569 U.S. 290 (2013) (applying *Chevron* deference to an agency's interpretation of ambiguous statute relating to scope of the agency jurisdiction).

66. *See* Ala. Const. 1901, Art. III, § 42; *Ex parte Legal Envtl. Assistance Found., Inc.*, 832 So. 2d 61, 67-72 (Ala. 2002) (Moore, C.J., concurring specially) (discussing the non-delegation doctrine and the separation of powers problems raised concerning administrative interpretation of statutes).

67. *See, e.g.*, *Bradberry v. Director, Office of Workers' Comp. Programs*, 117 F.3d 1361, 1366 (11th Cir. 1997) (noting that deference to agency interpretation is particularly due "when the agency has made a written interpretation of the regulation or has maintained a long-standing policy on the subject.") (internal quotations omitted).

68. *See Thomas Jefferson Univ. v. Shalala*, 512 U.S. 504, 515 (1994) (noting that "an agency's interpretation of a statute or regulation that conflicts with a prior interpretation is entitled to considerably less deference than a consistently held agency view") (internal quotations omitted).

69. While agencies are not generally bound to give their own prior decisions stare decisis effect, inconsistent decisions can be relevant in determining whether the agency has acted in an arbitrary and capricious manner. *See Ex parte Shelby Med. Ctr., Inc.*, 564 So. 2d 63, 68 (Ala. 1990).

70. *See Chestnut*, 208 So. 3d at 640-41 (refusing deference to unreasonable interpretation, and noting that "there is no showing that the zoning-enforcement coordinator's interpretation was based on any long-standing interpretation by the [agency]"); *Boswell v. Abex Corp.*, 294 Ala. 334, 336, 317 So. 2d 317, 318 (1975) ("The correct rule is that an administrative interpretation of the governmental department for a number of years is entitled to favorable consideration by the courts; but this rule of construction is to be laid aside where it seems reasonably certain that the administrator's interpretation has been erroneous and that a different construction is required by the language of the statute."); *Kids' Klub*, 874 So. 2d at 1098-1100 (discussing cases refusing to apply deference to a "mere litigation position"). *But see Ex parte State Health Planning & Dev. Agency*, 855 So. 2d at 1102 (declining to extend deference where interpretation contravened governing statute, even though the agency had "applied this construction of the statutory language ... for over 10 years.").

71. *United States v. Mead Corp.*, 533 U.S. 218, 228 (2001) (footnotes and citation omitted).

72. *Brookwood Health Servs., Inc. v. Affinity Hosp., LLC*, 101 So. 3d 1221, 1225 (Ala. Civ. App. 2012).

73. *Alabama State Pers. Bd. v. Dueitt*, 50 So. 3d 480, 482 (Ala. Civ. App. 2010) ("The standard of appellate review to be applied by the circuit courts and by this court in reviewing the decisions of administrative agencies is the same. ... [T]his court does not apply a presumption of correctness to a circuit court's judgment entered on review of an administrative agency's decision 'because the circuit court is in no better position to review an agency's decision than this court.'") (quoting *Alabama Bd. of Nursing v. Peterson*, 976 So. 2d 1028, 1033 (Ala. Civ. App. 2007)).

74. *See* Ala. Code 1975, § 41–22–20(k) (providing that, where review is not by trial *de novo*, "the agency order shall be taken as prima facie just and reasonable and the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact, except where otherwise authorized by statute").

75. *State Health Planning & Dev. Agency v. West Walker Hospice, Inc.*, 993 So. 2d 25, 29 (Ala. Civ. App. 2008).

76. *Colonial Mgmt. Group, L.P. v. State Health Planning & Dev. Agency*, 853 So. 2d 972, 975 (Ala. Civ. App. 2002) (internal quotations omitted).

77. *Alabama Bd. of Nursing v. Williams*, 941 So. 2d 990, 999 (Ala. Civ. App. 2005) (quoting *Ex parte Williamson*, 907 So. 2d 407, 416-17 (Ala. 2004)).

78. *Dueitt*, 50 So. 3d at 482 (quoting *Ex parte Personnel Bd. of Jefferson County*, 648 So.2d 593, 594 (Ala. Civ. App. 1994)); *Roberts v. State Oil & Gas Bd.*, 441 So. 2d 909, 912 (Ala. Civ. App. 1983) ("It is the function of the trial court to determine whether there is evidence which supports the Board's ruling. It is not the function of 'appellate courts' to substitute their judgment for findings of fact made by an administrative authority.").

79. *Affinity Hosp., LLC v. St. Vincent's Health System*, 129 So. 3d 1022, 1029 (Ala. Civ. App. 2012).

80. *See Roberts*, 441 So. 2d at 912 ("According to one set of experts, the gas reservoir did not extend onto Roberts's land to any great extent and where it did extend, the gas was in contact with water and could not be commercially productive. The Board found that these experts were more convincing and ruled accordingly. It is not the function of the trial court, nor is it this court's duty, to substitute its judgment for that of the Board's.").

81. *Ex parte HealthSouth of Ala., LLC*, 207 So. 3d 39, 41 (Ala. 2016) (discussing two of the factors to be analyzed in determining whether to issue a CON, and stating: "There is no statute or SHPDA regulation that makes those two considerations 'key' or determinative in every proceeding on a CON application. It is the proper role of SHPDA, not a reviewing court, to weigh those factors and others in determining whether to grant a CON."); *see also Affinity Hosp., LLC v. Brookwood Health Servs., Inc.*, 143 So. 3d 208, 214 (Ala. Civ. App. 2013) ("We hold that the determination of the consistency of a proposed project with the [State Health Plan] is a matter entrusted to SHPDA.").

82. *Affinity Hosp.*, 129 So. 3d at 1029 (Ala. Code 1975, § 41-22-20(k)(6) and (7)); *see also Alacare Home Health Services, Inc. v. Alabama State Health Planning & Dev. Agency*, 27 So. 3d 1267, 1273-74 (Ala. Civ. App. 2009).

83. Of particular interest is the possibility of seeking reconsideration before the agency (and the timeframe for seeking such review). *See Ex parte STV One Nineteen Senior Living*, 161 So. 3d at 203 (discussing *statutory* reconsideration periods and timing issues). However, care should be taken to ensure that any regulations covering review of an agency decision are not inconsistent with the governing statute.

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