

tioners are often more simple and more predictable than those available in other areas of law. The key is to become familiar with the statute. The success or failure of an OAPA appeal begins before the first hearing and luck favors the prepared.

1. The most famous impetus for regulation in twentieth century America was Upton Sinclair's book "The Jungle," which exposed disgusting conditions in the meat packing industry. See Upton Sinclair, *The Jungle* (1906).

2. See R. Shep Melnick, *Power to the People or to the Professionals? The Politics of Mature Regulatory Regimes*, 47 TULSA L. REV. 65 (2011).

3. See, e.g., 47 O.S. §563 (creating the Oklahoma Motor Vehicle Commission); 2 O.S. §§18-300 *et seq.* (authorizing the Oklahoma Wheat Utilization, Research and Market Development Commission).

4. 59 O.S. §135.1 *et seq.* (the Podiatric Medicine Practice Act); 59 O.S. §2051 *et seq.* (the Oklahoma Licensed Perfusionists Act); 59 O.S. §1451 *et seq.* (the Polygraph Examiner's Act). When researching an agency, the Oklahoma Administrative Code, is an invaluable tool. The regulations listed in the Code each provide their statutory authority. The code is available online at [www.oar.state.ok.us](http://www.oar.state.ok.us).

5. The complete list appears at 75 O.S. §§250.4 & §250.5.

6. The legislature inelegantly codified Article 1 as 75 O.S. §250.9 through §308.2, plus 75 O.S. §§ 250.2, 250.6, 250.7, and 250.9. Article 2 consists of 75 O.S. §308 (a) through §323. Both Articles share custody of 75 O.S. §§250, 250.1, 250.3, 250.4, 250.5, and 250.8. See 75 O.S. §250.1.

7. 75 O.S. §§ 250.4 (A) (1) & (B) (1); *Musgrove Mill, LLC v. Capitol-Medical Center Improvement & Zoning Comm.*, 2009 OK 19, ¶5, 210 P.3d 835, 836-37.

8. Nevertheless, "public trusts having the state, or any department or agency thereof, as beneficiary" are expressly subject to the OAPA. 75 O.S. §250.5.

9. See 75 O.S. §250.4 (A) (10).

10. 75 O.S. §250.4 (A) (3).

11. *Id.* at ¶15.

12. *Id.* at ¶2.

13. *Id.* at ¶22.

14. *Id.* at ¶45.

15. Indeed, the Supreme Court is the *only* proper forum for such appeals. OK. CONST. art IX, §20.

16. Concerning standards of review, see Justice John F. Reif, *Judicial Review of Administrative Agency Decisions: A Discussion of Jurisdiction and Standards of Review*, 81 OKLA. BAR J. 102, available at [www.okbar.org/obj/articles10/archived10.htm](http://www.okbar.org/obj/articles10/archived10.htm). It provides the definitive explanation of standards of review in administrative cases.

17. *But see Conoco Inc. v. State Dept. of Health*, 1982 OK 94, 651 P.2d 125 (comparing Article I appeals under §306 with Article II appeals under §318, and discussing the intersection of the two options).

18. For example, a rule cannot be invalidated simply because its impact statement is insufficient or inaccurate. 75 O.S. § 303 (D) (4). Furthermore, reviewing courts are deferential to an agency's interpretation of its own rules and regulations. *In re: Application for Permit to Build Abstract Plant of Great Plains Investments*, 2007 OK CIV APP 113, ¶19, 172 P.3d 237, 241.

19. 75 O.S. §306 (A).

20. 75 O.S. §306 (B).

21. 75 O.S. §306 (D).

22. See e.g. *Conoco, Inc. v. State Dept. of Health*, 1982 OK 94, ¶20, 651 P.2d 125, 132; *Martin v. Harrah Indep. School Dist.*, 1975 OK 154, ¶7, 543 P.2d 1370, 1372 ("It has long been established in Oklahoma that exhaustion of statutory administrative remedies is a jurisdictional prerequisite for resort to the courts").

23. *Transwestern Publishing, LLC v. Langdon*, 2004 OK CIV APP 21, ¶5, 84 P.3d 804, 805-06.

24. See *State Ex. Rel. Okla. Bd. Of Medical Licensure & Supervision v. Pinaroc*, 2002 OK 20, 46 P.3d 114.

25. 75 O.S. §306 (B); see also *Transwestern*, 84 P.3d at 804. In *Transwestern*, the Department of Labor investigated a wage claim and awarded an Employee back pay. The Employer sought judicial review of the decision in district court, but failed to name the Department of Labor as a party to the action. The Court of Civil Appeals held that the Department was a necessary party, and the failure to timely name it in the suit robbed the district court of jurisdiction to hear the case. *Id.* at ¶8.

26. *City of Tulsa v. State ex rel. Public Employees Relations Bd.*, 1998 OK 92, ¶12, 967 P.2d 1214, 1219.

27. See, e.g., *Martinez v. State ex rel. Okla. State Bd. Of Medical Licensure & Supervision*, 1993 OK CIV APP 68, ¶4, 852 P.2d 173, 175.

28. "A decision is 'arbitrary and capricious' if 'willful and unreasonable without consideration or in disregard of facts or without determining principle,' or 'unreasoning . . . in disregard of facts and circumstances.'" *Glover v. Okla. Dept. of Transp.*, 2011 OK CIV APP 62, ¶10, 259 P.3d 872, 876 (citing *State ex rel. Bd. of Trustees of Teachers' Retirement System v. Garrett*, 1993 OK CIV APP 29, ¶6, 848 P.2d 1182, 1183).

29. 75 O.S. §323.

30. *Feightner v. Bank of Okla.*, 2003 OK 20, 65 P.3d 624. *But see Bowen v. State ex rel. Okla. Real Estate Appraiser Bd.*, 2011 OK 86, 270 P.3d 133 (statutory procedures *may* be circumvented in cases that involve a constitutional question, inadequate administrative relief, or threatened or impending irreparable injury).

31. *Id.* at ¶¶5-8.

32. The Court left open the chance that a final order may not have preclusive effect in narrow circumstances, but expressed skepticism about the possibility. *Id.* at ¶¶14, 17.

33. *Id.* at ¶7.

34. Exceptions may exist in "certain cases of alleged irregularities in procedure before the agency." *Pharmicare Okla., Inc. v. State of Okla. Health Care Auth.*, 2007 OK CIV APP 5, ¶10, 152 P.3d 267, 269.

35. *Okla. Alcoholic Beverage Control Bd. v. Burris*, 1980 OK 58, ¶1, 626 P.2d 1316, 1317

36. *Id.* at ¶16 (citing 75 O.S. §321).

37. 75 O.S. §309.

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