

BEFORE THE IOWA BOARD OF PHARMACY EXAMINERS

Des Moines, Iowa

In the Matter of : DECISION
Richard B. Van Dyke : AND
: ORDER

To: Richard B. Van Dyke
RR 1
Oskaloosa, IA 52577

Notice of hearing was issued by the Iowa Board of Pharmacy Examiners on July 18, 1984, to determine if the license to practice pharmacy issued to Richard B. Van Dyke should be reinstated. Mr. Van Dyke had voluntarily surrendered his license to the Board on August 26, 1983, based upon his conviction in the United States District Court, Southern District of Iowa, on August 5, 1983.

A hearing pursuant to Chapters 155 and 258A, The Code 1983, and 620--9(2) of the Iowa Administrative Code was held on Wednesday, August 15, 1984, at 9:30 a.m. in the Grimes State Office Building, Des Moines, Iowa. The hearing was conducted by the Iowa Board of Pharmacy Examiners (the "Board"). Presiding was Thomas N. Martin, Administrative Hearing Officer.

Mr. Van Dyke appeared with counsel, Gary A. Robinson. The Board was represented by Thomas D. McGrane, Assistant Attorney General.

After hearing the testimony and examining the evidence, the Board convened in closed session to deliberate. The Board elected to defer any decision in the matter pending receipt of written arguments from counsel for Mr. Van Dyke and the State as to what legal authority exists which would allow the Board to reinstate Mr. Van Dyke's surrendered license or to issue a new license to him to practice pharmacy in Iowa. Those written arguments were received and presented to the Board for their review. A telephone conference of the Board was convened on Monday, October 1, 1984, at 9:30 a.m., at which time the question of reinstatement of Richard B. Van Dyke's license to practice pharmacy in Iowa was deliberated. The undersigned was instructed to prepare this, the Board's Decision and Order.

THE RECORD

The record in this matter consists of the testimony presented at the evidentiary hearing held on Wednesday, August 15, 1984, plus written arguments for reinstating the license from Mr. Robinson and arguments for denying reinstatement from Mr. McGrane.

FINDINGS OF FACT

1. Richard B. Van Dyke is a resident of Oskaloosa, Iowa, whose license to practice pharmacy in Iowa was voluntarily surrendered to the Board on August 26, 1983.
2. Respondent was convicted in United States District Court, Southern District of Iowa, of violations of Title 18, United States Code, Section 1341; Title 42, United States Code, Section 1395nn, and Title 18, United States Code, Section 1001. Such violations being related to his participation in the Title XVII Medicare Program. (as per copy of Court record submitted in testimony)
3. Respondent has been suspended from participation in the Title XVII (Medicare) and Title XIX (Medicaid) Programs for a period of twenty (20) years. (as per information submitted in testimony)
4. Respondent surrendered his license to practice pharmacy on August 26, 1983, with the admission that he had been "convicted of a felony related to the profession."

5. The violations for which Respondent was found guilty involved the submission of claims to the Medicare Program of medical supplies and prescription drugs by him on behalf of Van Dyke Drug Store. The conviction therefore related to the practice of pharmacy.

6. Respondent's conviction involved turpitude because it related to a dishonest act.

CONCLUSIONS OF LAW

1. Section 155.13(8) provides that: "The Board shall have the power to deny, suspend or revoke a license, when the applicant or licensee...is guilty of any of the following facts or offenses:

(8) Conviction of a crime involving turpitude, a plea or verdict of guilty, or a conviction following a plea of nolo contendere, is deemed to be a conviction within the meaning of this Section."

2. Board Rule 620--10.1(2), Iowa Administrative Code, provides that, "The Board has the authority to impose the following disciplinary sanctions:

c. Nonrenewal of a...license to practice pharmacy."

3. Board Rule 620--10.1(3) reads as follows: "The following factors may be considered by the Board in determining the nature and severity of the disciplinary sanction to be imposed:

a. The relative seriousness of the violation as it relates to assuring citizens of this state a high standard of professional care.

b. The facts of the particular situation.

c. Any extenuating circumstances or other countervailing situations.

d. The number of prior violations of complaints.

e. Seriousness of prior violations or complaints.

f. Whether remedial action has been taken.

g. Such other factors as may reflect upon the competency, ethical standards and professional conduct of the licensee...."

4. The Board concludes that the conviction of Respondent shows a violation of Section 155.13(8).

5. The Board concludes that the violation of the above statute supports disciplinary action against Respondent's license.

DECISION AND ORDER

It is the decision of the Board that Respondent's request for reinstatement of his license to practice pharmacy is denied. The Board further advises Respondent that they will not entertain a similar request for reinstatement before August 15, 1987. The Board also advises Respondent that any request for reinstatement on or after August 15, 1987, should be accompanied with evidence that he has complied with the requirements of 1983 Iowa Code Section 258A.2 and Board Rule 620--6.8, Iowa Administrative Code, during the interim period.

The Board also wishes the record to indicate that they considered the offenses for which Mr. Van Dyke was convicted to be extremely serious. The violations included a knowing and willful theft of money intended for medical care of the elderly. The impact of his

acts was to deprive Medicare beneficiaries of limited funds intended for use in reimbursement for items and services needed for their medical care, and a waste of tax dollars. Further, the Board believes Mr. Van Dyke's actions have resulted in revisions in Medicare payment guidelines with the end result that many needed medical supplies and services are no longer available to beneficiaries.


Norman C. Johnson
Executive Secretary
Iowa Board of Pharmacy Examiners

October 3, 1984
Date