

CHIROPRACTORS: One may be disbarred for immoral actions--immoral action discussed.

5-26
May 23, 1934.

Dr. Jerome Fontana, Secretary
State Board of Chiropractic Examiners
2605 Chippewa Street
St. Louis, Missouri.



Dear Dr. Fontana:

On May 11, 1934, you addressed a letter to this department requesting an opinion as to the right of the Board to revoke the license of one Dr. Erich F. Ebert, a Chiropractor licensed by the Board. In your letter you enclosed a news paper clipping which reads in part as follows:

"Ebert admitted under questioning that he had bought a medical diploma from Lindsay who was arrested recently by St. Louis authorities on charges of issuing and selling fraudulent diplomas. The charter of the Kansas City College of Medicine & Surgery, whose name appeared on the diploma, was forfeited by the Missouri Supreme Court in 1926 on charges that the college had trafficked in diplomas and had misused its charter powers."

On May 17, 1934, we wrote you requesting further facts upon which to base our opinion, stating that we desired the files and other history of this case, to which letter on May 19th you wrote in part as follows:

"* * * In the year of 1926, on January 7th, Erich F. Ebert graduated from the Missouri Chiropractic College, and shortly after that our law was passed, and on September 9th and 10th, of 1927, Ebert was granted a license by examination. He has since renewed his license accordingly to our law, and I wish further to state, that his Chiropractic diploma and his license are authentic in every respect."

In the first few days of April of this year, Dr. Erich Ebert was caught in a fraudulent diploma net by our city police, and stated to them and our prosecuting attorney, that he had purchased a medical diploma of a school out of existence for the past few years from one George M. Lindsay, for the purpose of some day going to the State of Arkansas, and with this fraudulent diploma, there be granted the right to practice the science of medicine.

This Board at that time felt that if Dr. Erich Ebert was of a character, who would stoop to such dishonorable tactics, and due to the fact that he has embarrassed the Chiropractic profession as a whole, we felt that his license should be revoked on these grounds." * * *

The Kansas City College of Medicine and Surgery referred to in the news paper article, was on June 23, 1926, ousted from doing business in this State for misuse of its corporate powers. The Supreme Court of Missouri in banc. in State ex inf. Otto, Attorney General v. Kansas City College of Medicine and Surgery, 285 S. W. 980, 1. c. 984, said:

" * * *The evidence satisfactorily shows that the respondent has violated the law of its organization in at least two respects: It has been conducted for pecuniary profit, which that law forbids. It has misused its corporate powers in a manner which threatens serious injury to the public welfare." * * *

In other parts of the opinion the Court severely criticized that institution for issuing diplomas for a cash price to persons who never attended the school, having this further to say:

" * * *We can imagine no more serious injury to the public than the issuance of degrees to practice medicine to persons wholly unqualified to treat the sick." * * *

Thus by the highest Court of this State the Kansas City College of Medicine & Surgery was shown to the public as an institution unfit to further use its franchise and powers because of its misuse and injury to the public. Thus Dr. Ebert is charged with knowledge as to the kind and character of the diploma he purchased. In fact he

openly admitted that he intended to use this diploma perhaps not to perpetrate a fraud upon the State of Missouri but in some other manner and form, as he stated that he was intending to qualify for an examination in the State of Arkansas.

It is our opinion that the Board may revoke the license of Dr. Ebert. Section 13553 R. S. Mo. 1929. 31 C. J. p. 251. In Re. Richards, 63 S. W. (2d) 672; State ex rel. vs. Ellis, 184 Ind. 307.

Section 13553 supra provides in part as follows:

"It shall be the duty of the board of chiropractic examiners to carefully investigate all charges of immoral or illegal actions of anyone to whom a license to practice chiropractic in this state has been issued.* * * *"

And further:

"* * *The accused shall have an opportunity to be heard to answer such charges in person, or by attorney, and if upon such hearing it shall be proven beyond a reasonable doubt to the board, that the accused is guilty of such immoral or illegal action* * *the board shall revoke his license."

31 C. J. page 242, defines "Illegal" as follows:

"Contrary to law, something which the law prohibits; something unlawful, unfit, not suited to the character, time and place; that which lacks authority of, or support from, law."

31 C. J. page 251, defines "Immoral" as follows:

"Contrary to conscience or the divine law; contrary to the moral or divine law; dishonest; hostile to the welfare of the general public; inconsistent with moral rectitude; inconsistent with purity or good morals; inconsistent with rectitude; licentious; not moral; unjust; vicious; wicked; wicked or unjust in practice."

In a recent case before the Supreme Court of Missouri in Banc In Re. Richards supra, it was held that an acquittal of a criminal charged against a licensed attorney would not prevent disbarment proceedings. The Court at page 678 said:

"* * * Assuming, without deciding, that the indictment was based on the acts referred to, it certainly does not follow that after acquittal thereon these same acts may not be charged and proved as reasons for disbarment if they in fact show that respondent is unfit to continue in the practice of law. The great weight of authority is that statutory grounds of disbarment are not exclusive."

And further:

"* * * Furthermore, we can think of no good reason why any misbehavior by respondent 'in his professional capacity,' even though it reach the gravity of a 'criminal offense involving moral turpitude,' is not a proper matter for investigation and disbarment as 'a misdemeanor and malpractice in his professional capacity.'* * *"

And further, page 684:

"* * * The apparent naivete of respondent's claim that in all that he did he was acting solely as Berg's attorney without any knowledge or intent of aiding and abetting the kidnappers is belied by the legal knowledge and intelligence displayed by him throughout these negotiations.* * *"

Thus Mr. Ebert would not now be in a position to plead that the mere fact that he did not use the fraudulent diploma to gain the end for which same was purchased would bar the State Chiropractic Board from jurisdiction to hear and determine his case to see if he be guilty of immoral actions. In fact the presumption would be that one who would attempt to do the thing he tried to do and was only barred therefrom because of exposure and arrest would not in our opinion relieve him or avail him of a plea of no injury done or fraud perpetrated - consequently no right of the Board to take action. It goes without saying that Mr. Ebert did a very disgraceful thing, that he has shown himself to be of a character opposite to ethics, professional conduct, and without regard of the rights of the public.

One of the prime purposes of the Chiropractic law is to regulate the action and conduct of persons holding themselves out to the public to practice Chiropractic, and the public has a right to be assured that such are honorable and upright in their professional conduct. In State of Indiana vs. Ellis supra, page 338, the Court said:

"Immorality as defined by Webster is 'The quality of being immoral'; 'an immoral act or practice.' Immoral is defined by the same authority as 'Not moral'; 'inconsistent with rectitude'; 'contrary to conscience or the divine law'; 'wicked', 'unjust'; 'dishonest'; 'vicious'. Immorality as defined by lawwriters is 'That which is contra bonas mores'; 'an act or practice which contravenes the divine command or social duties'. Immoral, as that which is 'Hostile to the welfare of the general public'; 'wicked'; 'unjust'; 'dishonest'; 'vicious'; 'unjust in practice'.* * *"

And further; page 340:

"* * *It is a practicable impossibility to set out in a statute in detail every act which would justify revocation of a license. The requirements of the statute can only be stated in general terms and reasonable discretion reposed in the officials charged with its enforcement. The statute in question is not void for uncertainty. Grounds commonly designated by statute upon which a medical board is authorized to revoke a physician's license, are 'unprofessional, dishonorable or immoral conduct.' 30 Cyc. 1557-1559.* * *"

In the above case the charges against the defendant were that he sold liquer in less quantities than a quart at a time without a license of the Board of Commissioners, and the Supreme Court of Indiana held that he was guilty and that his license could be revoked because of his acts of gross immorality.

In State ex rel. Lentine vs. State Board of Health, 65 S. W. (2d) 943, the Supreme Court of Missouri l. c. 949 said:

"* * *It is well settled that the power given to certain boards or officers to grant a license to practice medicine and surgery within the state as well as to revoke such license for good cause upon charges preferred and a hearing thereon is an exercise of the police power. 'The interest of the state in the practice and character of physicians does not by any means cease with the granting of licenses. Clearly the state has the power to revoke the licenses for good cause.* * *Grossly immoral conduct connected with the practice may be cause for revocation.* * *A provision would seem valid if to the effect that a license may be revoked because of grossly unprofessional conduct or conduct grossly unprofessional and dishonorable, for a fair interpretation of these terms is that they mean conduct which is by general opinion considered to be grossly unprofessional because immoral or disreputable. Unprofessional conduct as used in statutes does not mean merely unethical conduct as judged by the peculiar standards of the profession but is generally held to mean dishonorable conduct. The mere fact that conduct is unprofessional is not enough to justify revocation but it must have an additional quality, as, for example be also dishonorable or disreputable.* * *"

And further:

"* * *We are constrained to hold that the use of the general terms 'bad moral character' and 'unprofessional and dishonorable conduct' in specifying the grounds for revocation of a physician's license does not render our statute so uncertain, vague, or ambiguous as to be unenforceable. Certainty is required in this, that in preferring a charge the licentiate is entitled to be advised and informed of the specific acts or course of conduct on his part alleged to be unprofessional and dishonorable or made the basis of a charge of bad moral character.* * *"

And further, page 950:

"* * *It would not be practicable to the carrying out of the wholesome purpose of the statute to undertake to catalogue, list, or specify each and every act or course of conduct which would or under what circumstances, constitute bad moral character or unprofessional and dishonorable conduct, and we do not think the Legislature intended to do so.* * *"

In conclusion, as stated hereinbefore, it is our opinion that if the Board as a fact, finds Mr. Ebert guilty beyond a reasonable doubt of immoral or illegal actions, that it has a right to revoke his license. In this connection, however, we assume that the Board has properly charged him with such acts.

Yours very truly,

James L. HornBostel,
Assistant Attorney General.

APPROVED:

ROY McKITTRICK,
Attorney General.

JLH:MM