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Reinstatement of Revoked License to Practice Optometry

SYLLABUS:

A licensing board may not "reinstate" a revoked license, in the absence of statutory authority therefor, but it may issue a new license to a person whose license was revoked if it finds the person now meets all requirements required of previously unlicensed applicants.

FACTS:

On May 3, 1972, the Board of Registration and Examination in Optometry voted to institute proceedings before the Administrative Hearing Commissioner, in accordance with 32 M.R.S.A. § 2556, to revoke or suspend the license of Robert E. Stoddard, O.D. Hearing was held before the Administrative Hearing Commissioner, the tribunal vested with the discretionary power to suspend, revoke or modify the subject license. The decision was for revocation, effective October 20, 1972. Mr. Stoddard now seeks reinstatement of his license. The Board asks four questions pertaining to license reinstatement.

QUESTIONS:

1. Does the Board have authority to reinstate a license once it has been revoked?

2. If the answer to Question 1 is negative, does the statement in the Administrative Hearing Commissioner's Decision, i.e., "the Board may choose to reinstate" the license; create a special or exceptional case authorizing reinstatement?

3. Must a person who once held an optometrists license, but whose license was revoked, take an examination in order to be issued a new license?

4. Can an applicant for licensure as an optometrist who has been convicted of a felony qualify for such license?

ANSWERS:

1. No.
2. No.
3. Yes.
4. Yes.

REASONS:

1. A board or officer has no power to reinstate a license where the statute merely confers the power to suspend or revoke and the action has been to revoke. 1957-58 Atty. General Rep. 80. The nature and extent of the terms "revoke" and "revocation" must depend, in the first instance, upon the limitations, if any, and the exact wording of the statute. The statutes here pertinent, 32 M.R.S.A. § 2556, and 5 M.R.S.A. § 2407, are silent in this respect and thus impose no special meanings or limitations. The common meaning of "revoke" is to annul or make void by recalling or taking back. Black's Law Dictionary, Revised Fourth Edition, p. 1485. Where no contrary intent is contained in the statutes regulating optometry, the effect of a license revocation is to put the licensee in the same position as though a license had never been granted.

2. The office of Administrative Hearing Commissioner (Commissioner) is the tribunal vested by the Legislature with the discretionary power to suspend, revoke or modify the subject license. 5 M.R.S.A. § 2407; 32 M.R.S.A. § 2556. The statement in the Commissioner's decision on the instant license revocation can be interpreted to mean that absent any contrary intent in the statute, a revocation need not be a permanent bar to a new license. This statement creates no exceptional case. The Commissioner's Decision merely recognizes the fact that the optometrists' Board is the political body of State government that has been granted authority by the Legislature to determine whether any particular applicant for licensure meets the personal and professional standards required to practice optometry lawfully within the State of Maine. See 32 M.R.S.A. §§ 2454, 2501, 2502, 2556. The Administrative Hearing Commissioner could not alter the fundamental functions of the Board, as Question 2 suggests, for no power for such alteration exists. "Reinstatement" is a broad term, and in a licensing context could arguably be said to include issuance of a new license to a former licensee, provided the person satisfies statutory conditions. See, e.g., 1957-58 Atty. General Rep. 80.

Statutes governing the Board's authority to license are silent as to when a license may be issued once again to a person whose original license was revoked. Similarly, the statutes governing the Administrative Hearing Commissioner are silent as to how long a person's revocation of license status must remain in effect. But it is the

Administrative Hearing Commissioner who has authority to modify, suspend, or revoke a license (5 M.R.S.A. § 2407) and the exercise of his duly authorized discretion should not be made a mockery by the Board.

3. The person whose license has been revoked must take an examination as required by 32 M.R.S.A. § 2552. A person seeking to again become licensed has no greater rights than a person seeking an original license. Housman v. Board of Medical Examiners of California, 84 Cal. App. 2d 308, 186 P.2d 187; subsequent opinion of 190 P.2d 653; rehearing denied 192 P.2d 45.

4. An applicant who has been convicted of a felony is not forever barred from practicing optometry. As is true for all applicants, the convicted felon must satisfy the Board he is presently of good moral character. See Maine Board of Registration and Examination in Optometry, Rule 1, filed with the Secretary of State December 21, 1961. Also see Snelson v. Culton, 141 Me. 242, 42 A.2d 505 (1945). The burden at all times rests on the convicted felon to prove that he has rehabilitated himself and is entitled to again become licensed; the burden is not on the board to prove the contrary. Housman v. Board of Medical Examiners of California, 190 P. 2d 653, at 657; rehearing denied 192 P. 2d 45.

The Board is the sole finder of fact as to rehabilitation vel non, 32 M.R.S.A. § 2556 sub-§ 1 and Board Rule 1, supra. The Board is charged by the Legislature with the responsibility of exercising its independent judgment on all evidence concerning moral character of an applicant. This would include an examination of evidence of rehabilitation. A New York court has stated in Tanner v. DeSapio, 150 N.Y.S. 2d 640, that:

"...honesty is an essential element of the good moral character required to obtain licenses to practice hairdressing and cosmetology and to operate a beauty parlor, but a person once dishonest, as evidenced by conviction for grand larceny, may by subsequent conduct qualify as a person of good moral character."

There is no Maine case on point, and very few cases elsewhere deciding this issue of qualification. The New York rule seems imminently reasonable. As the court noted in Wasem v. Missouri Dental Board, 405 W.W. 2d 492 (1966):

"By licensing a person to practice the healing arts, the State bestows its seal of approval upon that person and certifies him to be not only a competent practitioner but a person of good moral character who will be honorable and reputable in his professional conduct."

JK/mf

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