

IN THE SUPREME COURT OF IOWA

NO. 18-0353
POLK CO. CASE NO. CVCV055524

MARK B. IRLAND, M.D.,
Petitioner-Appellant,

vs.

IOWA BOARD OF MEDICINE
Respondent-Appellee.

APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR POLK COUNTY
HONORABLE ARTHUR E. GAMBLE, JUDGE

APPELLANT'S PROOF REPLY BRIEF

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

- I. **DID THE DISTRICT COURT ERR IN DISMISSING DR. MARK IRLAND'S PETITION FOR JUDICIAL REVIEW?**

Iowa Code § 17A.19

APPELLEES' ARGUMENTS

I. THE DISTRICT COURT ERRED IN DISMISSING DR. IRLAND'S PETITION FOR JUDICIAL REVIEW.

A. No administrative remedies existed for Dr. Irland to contest the confidential letter of warning.

Dr. Irland did not have an option to contest the Board's confidential letter of warning at the agency level. Given there were no opportunities to contest the letter before the Board of Medicine, Dr. Irland pursued the only remedy available to him; a petition for judicial review under Iowa Code § 17A.19.

The Board first argues that Dr. Irland failed to exhaust administrative remedies as the first instance he challenged the letter was in his petition for judicial review. The nature of the letter itself eliminated any opportunity for Dr. Irland to contest the letter before the Board.

The letter states, "Pursuant to Iowa Code chapter 272C, this CONFIDENTIAL LETTER OF WARNING does not constitute formal disciplinary action". The letter further states, "This [letter] concludes the Board's investigation."

Under the Board's administrative rules the Board, "If the board concludes [at the close of investigation] that there is not probable cause to file

disciplinary charges, the board may issue the licensee an informal letter of warning or education.” 653 IAC 24.2(e)(4).

As Dr. Irland discussed in his Appellant’s brief, disciplinary sanctions were issued against him despite the Board’s finding that probable cause did not exist for any such charges. Under the circumstances, Dr. Irland could not challenge the non-existent charges under the Board’s traditional procedures.

The question of whether to sanction Dr. Irland without filing disciplinary charges was necessarily considered by the Board. *Ahrendsen ex rel. Ahrendsen v. Iowa Dep't of Human Servs.*, 613 N.W.2d 674, 676 (Iowa 2000). The agency action against Dr. Irland had no administrative remedy. Any potential administrative remedy was exhausted by the confidential letter of warning itself.

CONCLUSION

The Board’s confidential letter of warning imposing sanctions constitutes illegal agency action under Iowa Code § 17A.19. The sanctions were subject to judicial review under the same. The district court’s dismissal of Dr. Irland’s petition for judicial review should be reversed and remanded for a hearing on the merits of the petition.

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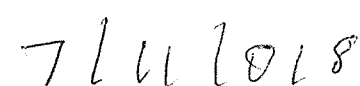
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