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STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF THE REQUEST FOR REINSTATEMENT OF LICENSE TO PRACTICE PHARMACY FRED GOLEN, R.Ph., APPLICANT.	:	FINAL DECISION AND ORDER

The parties to this proceeding for the purposes of sec. 227.53, Stats., are:

Fred H. Golen
128 Carriage Way Drive
Burr Ridge, IL 60521

State of Wisconsin
Pharmacy Examining Board
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708

The rights of a party aggrieved by this decision to petition the board for rehearing and to petition for judicial review are set forth in the attached "Notice of Appeal Information".

On December 21, 1992, the Pharmacy Examining Board denied the request of Fred H. Golen for the reinstatement of his license to practice pharmacy in the state of Wisconsin. Mr. Golen requested a class 1 hearing upon the denial, which was heard before an administrative law judge on February 1, 1993. Mr. Golen appeared personally at the hearing and by his attorney, Robert H. Suran, Suran & Suran, 9001 North 76th Street, P.O. Box 23325, Milwaukee, Wisconsin 53223. The state appeared by its attorney, Arthur J. Thexton, Department of Regulation and Licensing, Division of Enforcement, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin.

The administrative law judge issued a Proposed Decision on March 23, 1993. Mr. Thexton filed written objections to that decision on March 25, 1993, and Mr. Suran filed a written response to the state's objection on March 30, 1993. Oral arguments of counsel were held before the board on May 11, 1993.

Based upon the entire record in this case, the Pharmacy Examining Board makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Fred H. Golen, 128 Carriage Way Drive, Burr Ridge, IL 60521, (applicant) was licensed as a registered pharmacist in Wisconsin by license #7439, issued on May 27, 1965.

2. By its Final Decision and Order dated August 13, 1986, the Pharmacy Examining Board found after hearing that applicant had engaged in unprofessional conduct under sec. Phar 10.03(2), Wis. Admin. Code, in having been convicted in federal district court on March 1, 1985, of knowingly and intentionally distributing and causing to be distributed a Schedule III

controlled substance other than in the proper course of professional practice and not for a legitimate purpose; and under sec. Phar 10.03(21), Wis. Admin. Code in having had his license to practice as a pharmacist suspended by the state of Illinois on May 15, 1985. Applicant's licenses to practice as a registered pharmacist in the states of Michigan and Arizona were also revoked; however, his license to practice in Colorado remains in good standing.

3. Applicant's federal conviction resulted in a sentence of four years in prison followed by five years probation. Applicant served 26 months, 11 days in the minimum security prison facility at Oxford, Wisconsin. In August, 1988, he was granted work release for a period of six months and, on January 20, 1993, applicant was granted early release from probation by the United States District Court for the Northern District of Illinois.

4. In October, 1988, applicant became employed as a staff pharmacist by the United States Department of Veterans Affairs at the West Side Medical Center, Chicago, Illinois. He was promoted to the position of Outpatient Supervisor in April, 1992. In that year, applicant's performance evaluation was "highly satisfactory", and he received a performance award.

5. On June 29, 1992, applicant was granted a probationary license to practice as a registered pharmacist in the state of Illinois. Applicant was required to complete 30 hours of continuing education within four months of the grant of the limited license, is required to notify the Illinois board of his current employer, is prohibited for a period of at least two years from being employed as a pharmacist-in-charge at any pharmacy, and is prohibited from owning or holding an ownership interest in a pharmacy. The term of probation is for five years.

6. In addition to his employment with the Department of Veterans Affairs, applicant has been employed on a part time basis since September, 1992, as a pharmacist at a community pharmacy in Darien, Illinois.

7. Applicant obtained more than 100 units of continuing education within the two year period 1990-1991, and has completed or is enrolled in coursework exceeding 100 units of continuing education for the two year period 1992-1993.

8. By letter dated October 25, 1992, applicant applied for reinstatement of his license to practice as a registered pharmacist in Wisconsin.

CONCLUSIONS OF LAW

The Pharmacy Examining Board has jurisdiction in this matter pursuant to sec. 450.10, Stats.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the request of Fred H. Golen for reinstatement of his license to practice as a pharmacist in the state of Wisconsin is denied.

EXPLANATION OF VARIANCE

In March, 1986, the applicant, Fred H. Golen, was convicted in federal court of knowingly and intentionally distributing controlled substances other than in the proper course of professional practice and not for a legitimate purpose. The conviction was based upon a plea agreement signed by the applicant and which stated, in part:

As charged in the indictment, defendant Golen was hired by and worked for Morton Goldsmith at Drug Industry Consultants between October, 1981 and the summer of 1984. Drug Industry Consultants operated, on behalf of their owners, a series of pharmacy/medical centers in the Chicago area. These medical centers treated Medicaid patients. Mr. Golen became aware that almost all patients of these clinics were given no real medical treatment and were prescribed controlled substances with no valid medical reason, as well as numerous other unnecessary and unprovided prescription items and medical tests. The pharmacies provided the Medicaid patients with the controlled substances, but would frequently not provide the patient with the other prescribed items, despite billing the Illinois Department of Public Aid for the items. These pharmacy/medical centers existed principally for the purpose of illegally dispensing controlled substances for cash and for generating massive fraudulent billings under the Medicaid program.

Defendant Golen was responsible for interviewing and hiring doctors who were willing to prescribed controlled substances and numerous other prescription items for no valid medical reasons. Golen was also responsible for managing and supervising the business operations of some of the clinics and pharmacies operated by Drug Industry Consultants.

Golen supervised the opening of the clinic and pharmacy located at 1925 E. 79th St., Chicago, where Jessica Valentine obtained the controlled substances referred to in Count 36 of the indictment. He hired Dr. John Kitakufe, who prescribed the controlled substances in Count 36. He was aware that Dr. Kitakufe was prescribing controlled substances in the manner described above, and as a result, caused the substances referred to in this count to be distributed to Valentine. . . .

As charged in Count 94 of the scheme to defraud, Golen caused Warrent [sic] number AD2718390, in the amount of $3,899.97, to be mailed to Les-On Drugs, 2445 N. Harlem, on January 17, 1983.

As charged in Count 114 of the scheme to defraud, Golen caused warrant number AD3010739, in the amount of $7,390.01, to be mailed to Orchid Pharmacy, 1925 E. 79th Street, Chicago, on March 1, 1993. (Exhibit 2).

The conduct underlying applicant's conviction was of the utmost seriousness to the public, and impugned both the integrity of the pharmacy profession and the essential viability of the health care reimbursement system; involving, as it did, the illegal dispensing of controlled substances for cash and the generation of false billings to the medicaid system.

The applicant operated within the fraudulent scheme primarily in a management position. As admitted in his plea agreement, Mr. Golen was responsible for interviewing and hiring physicians willing to prescribe controlled substances for no legitimate medical reason, and was responsible for managing the business operations of some of the facilities involved in the fraudulent billing scheme. It is disconcerting that Mr. Golen's testimony at the denial hearing appears to now repudiate at least some of the general conduct admitted within the plea agreement. (See, Trans., pp. 37-44).

The board has not accepted the recommendation of the administrative law judge that Mr. Golen should be granted a limited license at this time. It remains the opinion of the board that Mr. Golen's license to practice pharmacy in this state should not be reinstated until such time as he has obtained an unrestricted license from the Illinois board. At the time of the conduct leading

to his criminal conviction, the applicant was practicing under the authority of the pharmacist's license granted to him by the state of Illinois. In fact, although applicant had received a pharmacist's license in this state as well as in Michigan, Arizona and Colorado in addition to that in Illinois, he has never actually practiced his profession in any state other than Illinois. Every state, with the exception of Colorado, has taken disciplinary action which prevents Mr. Golen from practicing pharmacy within its jurisdiction as an incident to his serious misconduct leading to the criminal conviction. In fact, his pharmacy position with the Veterans Administration appears to have come about only by virtue of the state of Colorado not having taken action upon the conviction.

Most simply expressed, the state of Illinois has been, and remains, that jurisdiction most familiar with factual matters underlying both the applicant's criminal conduct and the resultant circumstances under which he should be permitted to return to unlimited practice. That state has granted the applicant a probationary license which sets forth the conditions which must be met by Mr. Golen to be again reinstated to full and unrestricted pharmacy practice. It is the board's opinion that these conditions should be fully met prior to commencing practice in Wisconsin. This is, again, because of the extremely serious nature of Mr. Golen's misconduct, as well as the proximity of the Illinois board to both that misconduct and the ability to ascertain whether the applicant's conduct during probation is sufficient to warrant it in granting unrestricted licensure after the probationary period.

Mr. Golen's request for a reinstatement of his pharmacist's license is denied at this time.

Dated at Madison, Wisconsin this 10 day of August, 1993.

STATE OF WISCONSIN
PHARMACY EXAMINING BOARD

Charles H. Dinkel, R.Ph.

Charles H. Dinkel, Chairman

bdls2-2622

NOTICE OF APPEAL INFORMATION

(Notice of Rights for Rehearing or Judicial Review, the times allowed for each, and the identification of the party to be named as respondent)

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Pharmacy Examining Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Pharmacy Examining Board

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Pharmacy Examining Board.

The date of mailing of this decision is August 12, 1993.

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF THE PETITION FOR REINSTATEMENT OF FRED H. GOLEN, APPLICANT.	: : : :: :	NOTICE OF FILING PROPOSED DECISION LS9301141PHM

TO: Robert H. Suran, Attorney
9001 North 76th Street
P.O. Box 23325
Milwaukee, WI 53223
Certified P 992 818 935

Arthur Thexton, Attorney
Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708

PLEASE TAKE NOTICE that a Proposed Decision in the above-captioned matter has been filed with the Pharmacy Examining Board by the Administrative Law Judge, Wayne R. Austin. A copy of the Proposed Decision is attached hereto.

If you have objections to the Proposed Decision, you may file your objections in writing, briefly stating the reasons, authorities, and supporting arguments for each objection. Your objections and argument must be received at the office of the Pharmacy Examining Board, Department of Regulation and Licensing, Room 176, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, on or before April 5, 1993. You must also provide a copy of your objections and argument to all other parties by the same date.

You may also file a written response to any objections to the Proposed Decision. Your response must be received at the office of the Pharmacy Examining Board no later than seven (7) days after receipt of the objections. You must also provide a copy of your response to all other parties by the same date.

The attached Proposed Decision is the Administrative Law Judge's recommendation in this case and the Order included in the Proposed Decision is not binding upon you. After reviewing the Proposed Decision, together with any objections and arguments filed, the Pharmacy Examining Board will issue a binding Final Decision and Order.

Dated at Madison, Wisconsin this 23rd day of March, 1993.

Wayne R. Austin
Administrative Law Judge

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF
THE PETITION FOR REINSTATEMENT OF

FRED H. GOLEN

Applicant

PROPOSED DECISION

The parties to this proceeding for the purposes of Wis. Stats. sec. 227.53 are:

Fred H. Golen
128 Carriage Way Drive
Burr Ridge, IL 60521

State of Wisconsin
Pharmacy Examining Board
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708

Department of Regulation & Licensing
Division of Enforcement
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708

A Class I hearing was conducted in the above-captioned matter on February 1, 1993, at 1400 East Washington Avenue, Madison, Wisconsin. Fred H. Golen, applicant herein, appeared in person and by Attorney Robert H. Suran. The Division of Enforcement appeared by Attorney Arthur K. Thexton. A transcript of the proceedings was prepared, and was received on March 8, 1993.

Based upon the entire record in this matter, the administrative law judge recommends that the Pharmacy Examining Board adopt as its final decision in the matter the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Fred H. Golen, 128 Carriage Way Drive, Burr Ridge, IL 60521, (applicant) was licensed as a registered pharmacist in Wisconsin by License #7439, issued on May 27, 1965.

2. By its Final Decision and Order dated August 13, 1986, the Pharmacy Examining Board found after hearing that applicant had engaged in unprofessional conduct under Wis. Adm. Code sec. Phar 10.03(2) in having been convicted in federal district court on March 1, 1985, of knowingly and intentionally distributing and causing to be distributed a Schedule III controlled substance other than in the proper course of professional practice and not for a legitimate purpose; and under Wis. Adm. Code sec. Phar 10.03(21) in having had his license to practice as a pharmacist suspended by the State of Illinois on May 15, 1985. Applicant's licenses to practice as a registered pharmacist in the states of Michigan and Arizona were also revoked; however, his license to practice in Colorado remains in good standing.

3. Applicant's federal conviction resulted in a sentence of four years in prison followed by five years probation. Applicant served 26 months, 11 days in the minimum security prison facility at Oxford, Wisconsin. In August, 1988, he was granted work release for a period of six months and, on January 20, 1993, applicant was granted early release from probation by the United States District Court for the Northern District of Illinois.

4. In October, 1988, applicant became employed as a staff pharmacist by the United States Department of Veterans Affairs at the West Side Medical Center, Chicago, Illinois. He was promoted to the position of Outpatient Supervisor in April, 1992. In that year, applicant's performance evaluation was "highly satisfactory," and he received a performance award.

5. On June 29, 1992, applicant was granted a probationary license to practice as a registered pharmacist in the State of Illinois. Applicant was required to complete 30 hours of continuing education within four months of the grant of the limited license, is required to notify the Illinois board of his current employer, is prohibited for a period of at least two years from being employed as a pharmacist-in-charge at any pharmacy, and is prohibited from owning or holding an ownership interest in a pharmacy. The term of the probation is for five years.

6. In addition to his employment with the Department of Veterans Affairs, applicant has been employed on a part time basis since September, 1992, as a pharmacist at a community pharmacy in Darien, Illinois.

7. Applicant obtained more than 100 units of continuing education within the two year period 1990-1991, and has completed or is enrolled in coursework exceeding 100 units of continuing education for the two year period 1992-1993.

8. By letter dated October 25, 1992, applicant applied for reinstatement of his license to practice as a registered pharmacist in Wisconsin.

CONCLUSIONS OF LAW

1. The Pharmacy Examining Board has jurisdiction in this matter pursuant to Wis. Stats. sec. 450.10.

2. There is sufficient evidence of applicant's rehabilitation to support grant to applicant of a limited license to practice as a registered pharmacist in the State of Wisconsin.

ORDER

NOW, THEREFORE, IT IS ORDERED that Fred H. Golen may sit for the federal and state law examinations specified at Wis. Adm. Code sec. Phar 4.02(1) and (2).

IT IS FURTHER ORDERED that upon passing the federal and state law examinations, Fred H. Golen shall be granted a limited license to practice as a registered pharmacist in the State of Wisconsin imposing the following terms and conditions:

a. Applicant shall file with the board the name, address and telephone number of his employer(s), and shall report to the board any change in employment status, change in his address or change in his phone number within five days of any such change.

b. For the term of the limited license, applicant may not be employed as a pharmacist-in-charge at any pharmacy, and may not hold an ownership interest in any pharmacy.

c. Applicant may petition the board for modification of any of the terms and conditions of the limited license one year following its grant, and may petition for reinstatement of a full unrestricted license four years following its grant.

OPINION

At the hearing herein the administrative law judge was reminded that he had served as hearing examiner in the Class II proceeding which resulted in the revocation of Mr. Golen's license. The ALJ was also reminded that in his opinion accompanying the Proposed Decision in the earlier proceeding, he had commented that in light of the violations found nothing but full revocation of Mr. Golen's license was justified. That opinion also cited, however, to the disciplinary objectives established by the Wisconsin Supreme Court. These are protection of the public, deterring other licensees from engaging in similar misconduct, and promoting the rehabilitation of the licensee. The evidence in this record leads to the conclusion that these objectives have been met in this case, and that a conditional return of Mr. Golen's license is therefore appropriate. More specifically, there is evidence of affirmative reformative action by Mr. Golen in the period since the misconduct occurred, and mitigating evidence of his original motivation and intent as it relates to his participation in the illegal activities by the firm for which he was employed.

Mr. Golen's criminal conviction was based on a Plea Agreement by which applicant admitted that in his employment with Drug Industry Consultants (DIC), which operated a number of "storefront" pharmacy/medical centers in Chicago, he became aware that the clinics existed principally for the purpose of illegally dispensing controlled substances for cash, and for generating fraudulent billings under the medicaid program. Mr. Golen also agreed under the Plea Agreement that he was responsible for "interviewing and hiring doctors who were willing to prescribe controlled substances and numerous other prescription items for no valid medical reasons," and that he was "responsible for managing and supervising the business operations of some of the clinics and pharmacies operated by Drug Industry consultants." Because Mr. Golen was incarcerated at the time of the Wisconsin pharmacy board's disciplinary proceeding on July 1, 1986, he was unable to attend the hearing or to offer evidence as to the circumstances underlying the Plea Agreement and subsequent conviction. Some of those circumstances were described at the reinstatement hearing, and provide a degree of mitigation in terms of Mr. Golen's involvement with DIC.

In 1980, Mr. Golen was seeking employment in pharmacy management. He had known the owner of DIC, Morton Goldsmith, for many years, and Mr. Goldsmith offered him a management position with the firm. Because Golen also had a real estate brokers license, his duties were to include finding locations, making leases and supervising construction of new clinics. These were operated as partnerships, with Goldsmith entering into partnership agreements with outside investors. Golen was also responsible for doing the initial interviews with physicians and pharmacists

to be employed in new clinics, though he testified that he did not have authority to do any actual hiring, and did not ascertain whether those he interviewed were willing to practice in an illegal manner. Mr. Golen testified that he also did not practice as a pharmacist at any of the pharmacies, had no interaction with any patient, and had nothing to do with the clinics' billing practices or procedures.

Mr. Golen's testimony of his discovery of the manner in which the clinics were operated was as follows:

> A. I did exactly what [Goldsmith] described the job as for about four months. And then he asked me to take care of some problem or whatever he had in one of these clinics. And I went -- and I went to this clinic while it was operating and . . . . it was then that I saw and realized what was going on in these clinics.
>
> Q. (by Mr. Suran) What was that?
>
> A. That they were -- that they were getting perfunctory medical examinations and that they were getting prescriptions for medication -- I'm not talking about controls or anything now. I'm talking about medications that they may or may not have needed -- the people. And that it was a -- it was an illegal enterprise.
>
> Q. What did you do?
>
> A. I went over and over -- I went over and over in my mind, and I made a second mistake, and I didn't go to the authorities and I didn't leave.
>
> Q. So you hung in there and stuck around?
>
> A. I stuck around, yes. Yes. Regrettably.

Mr. Golen fully acknowledges his criminal culpability in having continued to participate as a member of the management of DIC following his discovery of the true nature of its operations. Applicant's testimony, however, is that at the time he became employed by DIC, he was unaware that it was engaged in illegal activities. That testimony, which is credited, by no means pardons his subsequent misconduct. But it does establish that applicant had no criminal motivation or intent at the time he joined DIC, and that he apparently never directly participated in the specific activities which provided the basis for his conviction. These are mitigating factors, as is the fact that he fully cooperated in the investigation and prosecution of the criminal matter.

But even if the circumstances described by Mr. Golen are not to be considered in mitigation in terms of the seriousness of his earlier misconduct, his conduct since his arrest leads to the conclusion that he has satisfactorily demonstrated his rehabilitation:

-- Applicant cooperated fully in the investigation of the federal charges against him and other management members of DIC and testified against them in court.

-- While denying some of the factual details set forth in the federal Plea Agreement, applicant has at no time contested or denied criminal culpability.[1]

-- While incarcerated, applicant tutored other inmates for their high school GED's, and completed continuing pharmacy education by correspondence.

-- Applicant was granted early work release in August, 1988, and was granted early release from probation in April, 1992.

-- Starting in August, 1988, applicant has been employed by the department of Veterans Affairs as a staff pharmacist. He was promoted to a supervisory position in April 1992, and his most recent evaluation was "highly satisfactory." Applicant's work supervisor, Dr. Joseph McElroy testified;

> The quality of his work is excellent. Fred is consistent in his attention to the staff and the people. He's reliable as far as coming to work. He manages our narcotic inventory. . . and there's never been a discrepancy there. Fred does a fantastic job for us. . . . I think Fred really contributes to our work area and I know that Fred would contribute to any pharmacy environment that he worked in. (Tr., p. 85)

-- In addition to his full time employment with the veterans Administration, applicant is employed part time as a pharmacist in a community pharmacy in Darien, Illinois in order to pay debts arising from the events in question here in the amount of approximately $135,000.

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[1] There was confusion at the hearing as to the wording of the Plea Agreement. Mr. Golen's attorney was reading from an unsigned draft (Exhibit 2, dated 2/1/93) which alleges applicant's participation in a specific illegal pharmacy transaction and his participation in fraudulent mailing of warrants to the State of Illinois. The signed Plea Agreement (Exhibit 1, dated 7/1/86) dropped these factual assertions, and these omitted assertions were the ones that applicant denied at this hearing.

-- Over the past four years, applicant has averaged more than 50 units of continuing education per year, including his current enrollment in a one year course in Ambulatory Care for Pharmacy.

Applicant's testimony at hearing was credible and evinced genuine regret and remorse over his past conduct. There is no suggestion that in his nearly 30 years of practice as a pharmacist prior to his conviction or in the nearly five years since his release he has engaged in any misconduct other than that for which he was convicted, and no reason to believe that he will engage in further misconduct in the future. The ALJ believes that Mr. Golen has satisfactorily demonstrated his rehabilitation, and that the public health, welfare and safety will not be imperiled by grant of a limited license.

Finally, in terms of the proposed Order, it is suggested that imposition of the same limitations imposed by the State of Illinois in its probationary order is appropriate. The recommendation varies from the Illinois order in that all conditions shall remain in effect for the full term of the limited license unless the board acts affirmatively to modify them, and in that the term of the limited license itself is for an indefinite period of not less than four years (which is approximately when the Illinois probation terminates). The further requirement that Mr. Golen complete the federal law exam and state jurisprudence exam is in recognition of the fact that while Mr. Golen was graduated from the U.W. School of Pharmacy (in 1957), he has never practiced as a registered pharmacist in this state.

Respectfully submitted this ~~24th~~ 23rd day of March, 1993.

Wayne R. Austin
Administrative Law Judge

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