

## **Opinion No. 58-214**

October 29, 1958

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Hilton A. Dickson, Jr.,  
Assistant Attorney General

**TO:** Mr. Pat Hollis, Secretary, New Mexico Board of Pharmacy, 217 E. Palace Avenue,  
Santa Fe, New Mexico

### **QUESTION**

#### QUESTIONS

1. Does a person lose his status of a citizen when convicted of a crime and sentenced to a term in the penitentiary?
2. Does the Board have the right to revoke a license of a Pharmacist when he has been involved in an accident?
3. Is it mandatory that the Board revoke the abovementioned license?
4. Does our Pharmacy law, which gives the Board the power to revoke or suspend a license on various enumerated grounds, including drug addiction and habitual drunkenness, give the Board such power with respect to actions of a licensee under its jurisdiction, committed off the job, so long as such actions have not been committed by an addict?

#### CONCLUSIONS

1. See opinion.
2. See opinion.
3. No.
4. Yes.

### **OPINION**

#### ANALYSIS

Considering briefly the presented facts as give rise to your inquiries, it appears that a licensee of the Board of Pharmacy was involved in an automobile accident resulting in a death or deaths. Subsequently, said licensee was tried on a criminal charge arising from the aforesaid accident, found guilty and sentenced to the state penitentiary for a term of

one to ten years. In keeping with these facts, you request our opinion as to the specific questions above asked.

A.G. Opn. No. 6004, dated August 24, 1954, written by Henry A. Kiker, Jr., discloses thorough research into general questions above raised. Mr. Kiker pointed out that:

"In your letter of August 10, 1954, you request the opinion of this office with regard to the right of a convicted felon to apply for a Barber's or Real Estate Broker's license during the time that he is on parole. You also request our opinion with regard to similar applications to State Licensing Boards empowered to issue licenses for other professions or occupations.

In the early English Common Law, one who was convicted of a felony underwent what was termed 'civil death.' That is to say, such a person lost all of his civil and political rights, including the right to sue, the right to inherit property, the right to vote, etc. **In the absence of statutes, however, the doctrine of civil death has never been applied fully in the United States.**

'In the absence of statute, the doctrine of civil death has been generally denied in this country . . .' 18 C.J.S., Section 4, 'Convicts', p. 103.

In the case of *Musgrave v. McManus*, 24 N.M. 227, the Supreme Court of New Mexico, in determining the right of one convicted of a felony to maintain a legal action said:

' . . . In New Mexico there is no disability in a convict to institute a civil action, the only results of conviction of crime being set forth in our statute, section 1450, Code 1915, and the provisions of Section 1, Article 7 of the Constitution.'

The section of the statute referred to by the Court has been codified in Section 41-101 of the 1941 Compilation, which provides:

'A crime or public offense is an act or omission forbidden by law, and to which is annexed, upon conviction, either of the following punishment:

First. Death.

Second. Imprisonment.

Third. Fine.

Fourth. Removal from office; or

Fifth. Disqualification to hold and enjoy any office of honor, trust, or profit, under the laws of this state.'

Thus, when a statute specifically provides that a part of the punishment for a conviction thereunder is the loss of the right to hold office, a convicted felon in this state loses that particular civil right. Such a statute is Section 41-801, N.M.S.A., 1941 Compilation, dealing with bribery. It is our opinion, however, that under such a statute, and similar statutes, a convicted felon is disqualified only from holding public office, and not from pursuing any private profession or occupation.

Section 1, Article 7 of the Constitution of New Mexico excludes from those who are qualified voters in this state, '. . . persons convicted of a felonious or infamous crime unless restored to political rights . . .' and Section 56-503, N.M.S.A., 1941 Compilation, makes it unlawful for any warden of a penitentiary, sheriff, or jailer to take to vote, or to permit to vote any prisoner under his custody. The statutes and the constitutional provisions cited above constitute the only deprivations of civil or political rights suffered by one who is convicted of a felony in New Mexico.

We are of the opinion, therefore, that a convicted felon, while on parole, is under no disqualification that would prevent him from applying for a license to practice barbering or to practice as a real estate broker, or for a license to practice any other trade, profession or occupation in this state.

You should be advised, however, with regard to the feasibility of such convicted felons applying for such licenses that the statutes prescribing the qualifications required for practicing the various trades, professions and occupations universally contain requirements with regard to good moral character on the part of applicants." (Emphasis supplied)

Since the same constitutional and statutory provisions are found in our present law, it is concluded as our opinion that a person does not lose his status of a citizen, but does lose his right to vote and to hold those public offices in regard to which felony convictions are specifically provided for as a disqualification.

In analyzing our conclusion to your second question, it is well to turn to the language of Sec. 67-9-7 N.M.S.A. (P.S.) whereby is provided in part:

"The board of pharmacy shall, upon application, and at such time and place and in such manner as they may determine, examine each and every person who shall desire to conduct the business of selling at retail, compounding or dispensing drugs, medicines or chemicals for medical use, or of compounding or dispensing physicians', dentists' and veterinarians' prescriptions as pharmacists in the state of New Mexico, and if a majority of said board shall be satisfied that said applicant is competent and fully qualified to conduct said business of compounding and dispensing drugs, medicines or chemicals for medical use, or to compound and dispense such prescriptions, they shall enter the name of such person as a registered pharmacist, in the book provided for in the preceding section. Provided, every applicant for examination by the board of pharmacy shall be not less than twenty-one (21) years old, of good moral character and not addicted to the use of narcotic drugs or alcoholic liquors, and must be a graduate of a

college of pharmacy recognized by the board of pharmacy, except as hereinafter provided."

And also by Sec. 67-9-10, N.M.S.A. (P.S.):

"The board of pharmacy shall have the power to suspend, for a period not to exceed ten (10) months, or to revoke, the certificate of a registered pharmacist on any of the following grounds.

(a) Immoral, dishonorable or unprofessional conduct; . . ."

Accordingly, and in our opinion, the Board of Pharmacy has the right (authority) to revoke a license of a pharmacist involved in an accident as hereinbefore considered.

Referring again to A.G. Opn. 6004, supra, we find that:

"The commission of acts involving moral turpitude constitutes a ground under most of the statutes prescribing the powers of licensing boards to refuse or to revoke a license. Thus, Sec. 51-507, N.M.S.A., 1941, provides that a license to practice as a physician may be denied or revoked when the applicant therefor or holder thereof has been guilty of immoral, dishonorable or unprofessional conduct.

\* \* \* \*

The State Licensing Boards have wide discretion in determining whether or not a particular applicant has good moral character, and such Boards would no doubt take into consideration an applicant's conviction of a felony in determining his good moral character."

In keeping with the aforequoted and upon a review of the provisions of the existing pharmacy code, we conclude that there is no mandatory requirement calling for a revocation of the herein considered licensee's certificate. Determination of such action is fully within the discretion of the Board.

Finally, you inquire as to the pharmacy board's authority to revoke or suspend a license by reasons of acts or conduct not directly connected with carrying on the profession of pharmacy. Referring again to the aforestated statutes, there is no suggestion that the determination of an applicant's or licensee's "good moral character", or "immoral, dishonorable or unprofessional conduct" is in any sense restricted to considerations evolving from his professional acts. Accordingly, it is our opinion that the Board has jurisdiction to suspend or revoke a licensee's certificate whenever said Board should determine the fact of any undesirable conduct based on moral turpitude.