

IN THE SUPREME COURT OF IOWA

NO. 18-0353

MARK B. IRLAND, M.D.,

Petitioner-Appellant,

vs.

IOWA BOARD OF MEDICINE,

Respondent-Appellee,

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

APPELLEE'S RESISTANCE TO
APPLICATION FOR FURTHER REVIEW
(COURT OF APPEALS DECISION DATE: MARCH 6, 2019)

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STATEMENT OPPOSING FURTHER REVIEW

The Court should deny Appellant Mark Irland's application for further review because none of the grounds that typically justify further review are present here. The Court of Appeals affirmed the district court's decision dismissing Dr. Irland's petition for judicial review, because the Board of Medicine has not taken any final disciplinary action toward Dr. Irland's medical license, and therefore judicial review is premature. Both the district court and the Court of Appeals decisions are entirely consistent with this Court's precedent on the scope of judicial review under Iowa Code chapter 17A, and there is no need for this Court to review it.

Dr. Irland asked for judicial review of a confidential letter of warning he received from the Iowa Board of Medicine. The Board issued Dr. Irland a confidential letter of warning after the Board received a serious complaint about Dr. Irland's care of a 29-year old patient, who subsequently died. The complaint alleged that Dr. Irland failed to recognize the seriousness of the patient's life-threatening condition, ignored the concerns of other medical staff, and failed to transfer the patient to an intensive care unit in time to save his life.

In part because Dr. Irland had already voluntarily stopped practicing medicine, the Board decided not to file a statement of charges, but instead, confidentially advised Dr. Irland by letter that it had concerns about his care. The letter indicated that the Board had decided not to file charges and that the letter is not a formal disciplinary action. The letter did state that since Dr. Irland was no longer practicing medicine, the Board had chosen not to order him to complete a clinical competency evaluation, but that if he returned to practice, the Board would do so. The Court of Appeals described this letter as “unconventional” because it informed Dr. Irland of actions the Board would take in the future if he returned to practice. But because Dr. Irland would be entitled to a contested case hearing before the Board before he could be forced to undergo a competency evaluation, the Court of Appeals correctly held that the Board has not yet taken final agency action, and that Dr. Irland has not exhausted his adequate remedies before the agency.

Dr. Irland argues that this Court should review the Court of Appeals decision for the sole reason that he alleges it has decided a substantial question of constitutional law or an important question of law which has not been, but should be, settled by this Court. *See Iowa R. App. P. 6.1103(1)(b)(2); Irland Further Review App. at 7.* Dr. Irland is incorrect; the Court of Appeals

decision is soundly based on longstanding Iowa Supreme Court precedent and the questions raised by his petition for judicial review can be answered by settled law.

This Court has long held that where an administrative agency has not yet taken final action, judicial review is not appropriate. *Salsbury Labs. v. Iowa Dep't of Env'tl. Quality*, 276 N.W.2d 830, 837 (Iowa 1979); *North River Ins. v. Iowa Div. of Ins.*, 501 N.W.2d 542, 545 (Iowa 1993). Judicial review of an intermediate agency action may be had only if both (1) adequate administrative remedies have been exhausted and (2) judicial review of final agency action would not provide an adequate remedy. *Pro Farmer Grain v. Iowa Dep't of Agric.*, 427 N.W.2d 466, 467 (Iowa 1988). These concepts have been a part of administrative law in Iowa for decades. Here, the Board cannot require Dr. Irland to do anything, without a full contested case hearing at the agency level. The courts should wait until the agency's final action to review it. *Salsbury*, 276 N.W.2d at 837.

The Court of Appeals correctly held, based on long-standing Iowa law, that the Board's action was not final, that Dr. Irland has not exhausted his remedies before the agency, and that judicial review of a final agency action

would provide an adequate remedy. Dr. Irland's request for further review in this Court should be denied.

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because this resistance has been prepared in a proportionally spaced typeface using Times New Roman in 14-point font and contains 764 words, excluding the parts of the resistance exempted by Iowa R. App. P. 6.903(1)(g)(1).

/s/ Jordan G. Esbrook _____
Jordan G. Esbrook
Assistant Attorney General

CERTIFICATE OF SERVICE

I, Jordan G. Esbrook hereby certify that on the 4th day of April, 2019, I or a person acting on my behalf did serve Appellee's Resistance to Application for Further Review on all other parties to this appeal by EDMS to the respective counsel for said parties:

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CERTIFICATE OF FILING

I, Jordan G. Esbrook, hereby certify that on the 4th day of April, 2019,
I or a person acting on my behalf filed Appellee's Resistance to Application
for Further Review with the Clerk of the Iowa Supreme Court by EDMS.

/s/ Jordan G. Esbrook
Jordan G. Esbrook
Assistant Attorney General