

88-13

BEFORE THE ACCOUNTANCY EXAMINING BOARD
OF THE STATE OF IOWA

IN THE MATTER OF)	Case No. 88-13
)	DIA Docket No. 89DOCPL-2
DOUGLAS K. LINDAMAN)	
Certificate No. 3378)	DECISION
Respondent)	

A Complaint was filed by William M. Schroeder, Executive Director of the Iowa Accountancy Examining Board (hereinafter referred to as the Board), and Dr. Gaylon L. Halverson, CPA, Board Chair, on December 14, 1988, as amended by an Order entered February 20, 1989. The Complaint, as amended, alleged that Douglas K. Lindaman, CPA, (hereinafter referred to as the Respondent), pled guilty to two felony charges of lascivious acts with a child; further, that said conduct is discreditable to the public accounting profession. The Complaint further alleged that the Respondent had violated several Iowa Code and Iowa Administrative Code sections, and prayed that the Board take such action that it deems appropriate under law.

An Order was entered on January 30, 1989 which set the hearing on the above-captioned contested case for Saturday, March 18, 1989 at 1:30 o'clock p.m.

The hearing on the above complaint was held on March 18, 1989 commencing at approximately 1:35 o'clock p.m. in the conference room, offices of the Iowa Department of Commerce, 1918 S.E. Hulsizer Avenue, in Ankeny. Present were the following members of the Board: Florence Gray, AP, Darryl Henze, CPA, Judy Kuppmeier, Public Member, A. E. (Al) Iverson, CPA, Ken Putzier, CPA, Diane McNulty, CPA, and Dr. Gaylon L. Halverson, CPA, Board Chair. Respondent personally appeared, pro se. Assistant Attorney General Theresa O'Connell Weeg appeared for the State. Present also were members of the Board staff and a court reporter. James R. Axt, Administrative Law Judge of the Iowa Department of Inspections and Appeals, presided.

The hearing was open to the public, at Respondent's direction.

The Board, having heard the evidence and arguments of the parties, having taken official notice of the administrative file herein, and being fully informed in the premises, deliberated in closed executive session. The Board directed the undersigned Administrative Law Judge to prepare the Board's Decision and Order. Wherefore, the undersigned Administrative Law Judge, on authority of the Board, hereby enters the following:

THE RECORD

The evidentiary record in this case includes the following: The Complaint, the Order and Notice of Hearing, the Answer and Motion of Respondent, the Response to the Answer and Motions of the State, Motion for Protective Order of the State, an Order entered January 30, 1989, an Order entered March 13, 1989, Interrogatories of Respondent, Answers to Interrogatories of the State, the recorded testimony and arguments of the parties of the hearing conducted via telephone conference on March 7, 1989 and the recorded testimony of the witnesses on March 18, 1989 as well as the State's Exhibits 1 and 2 and the Respondent's Exhibits 1 through 3 inclusive. During the course of the hearing, the Administrative Law Judge took official notice of the documents contained in the administrative file.

FINDINGS OF FACT

1. The Respondent has received due, proper and timely service of the Complaint and Order, Notice of Hearing, and Order [for Continuance] dated January 30, 1989. The Board has proper jurisdiction over the Respondent and the subject matter in this contested case.

2. Respondent was issued Iowa CPA Certificate No. 3378 by the Board on February 4, 1980; at the time of the hearing, the certificate was in full force and effect.

3. The factual allegations of the Complaint, as amended, are true, correct, and uncontested by the Respondent.

Pursuant to State's Exhibit 1, composed of certified copies of court documents, on September 12, 1988 the Respondent herein pled guilty to a charge of lascivious acts with a child in violation of Iowa Code Section 709.8, as set forth in Count II of a trial Information. Count II of the Information stated: "The said Douglas Lindaman during the summer months of the calendar year 1987, in the County of Floyd and the State of Iowa did unlawfully and willfully commit lascivious acts with A.H., a child, in violation of section 709.8 of the Iowa Criminal Code." In a Sentencing Order, the court committed Respondent herein to the custody of the Director of the Iowa Department of Corrections for a term not to exceed five (5) years. The Sentencing Order also provided that the Respondent herein was to make restitution to the victim and recommended that he not be considered for parole until such time as he has satisfactorily completed the sexual offenders treatment program and is of no substantial risk to the public with regard to future criminal offenses.

Pursuant to State's Exhibit 2, composed of certified copies of court documents, on September 12, 1988 the Respondent herein pled guilty to a charge of lascivious acts with a child, in violation of Iowa Code Section 709.8. In a Sentencing Order, the District Court in Mitchell County committed the Respondent herein to the

custody of the Iowa Department of Corrections for a term not to exceed five (5) years. This Sentencing Order also recommended that Respondent herein satisfactorily complete the sexual offenders treatment program. In both matters, the Sentencing Orders provided that the two (2) - five (5) year terms were to run consecutively and not concurrently.

4. During the course of the hearing, the Respondent testified at length concerning his attempts to suppress his homosexual orientation for approximately a 20 year period prior to the events which led to his criminal convictions.

5. Respondent has not made restitution in either criminal proceeding and asserted that the court has not determined damages and reduced them to a sum certain.

6. Prior to Respondent's incarceration on criminal charges, respondent sought clinical treatment at a "Sex Clinic" in Minneapolis, Minnesota and attended "Sexoholics Anonymous" sessions in north Iowa. At the time of the hearing, Respondent was released from incarceration, pending appeal of his criminal convictions for approximately forty-five (45) days. In that interim, Respondent had not attended any "Sexoholics Anonymous" meetings. Respondent did consult with a psychologist Bobby Hurst, for approximately one-half hour. Respondent has not participated in the sexual offenders treatment program of the Iowa Department of Corrections due to a requirement that an inmate complete ten percent of his sentence prior to participation in the program. Respondent asserted that due to a personal bankruptcy and pressing financial problems, he was unable to pursue treatment as a sexual offender. Respondent expressed his intent to get help from the self-study of written material.

7. In the past, Respondent has also been admitted to the practice of law in this State and held positions of distinction and trust in community and civic organizations.

8. Finally, the Plaintiff admitted touching an 11 year old boy in the groin area. Respondent stated that he did not think that it would happen again, however, could not be certain.

CONCLUSIONS OF LAW

1. The authority to take disciplinary action against a CPA as a professional licensee is found in Iowa Code chapter 116 and 258A.

Iowa Code section 258A.3 (1987) provides:

"Authority of licensing boards.

1. Notwithstanding any other provision of this chapter, each licensing board shall have the powers to:
 - (a) Administer and enforce the laws and administrative rules provided for in this chapter and any other statute

which the licensing is subject; . . .
(c) Review or investigate . . . alleged acts or omissions which the Board reasonably believes constitute cause under the applicable law or administrative rule for licensee discipline; . . .
2. Each licensing board may impose one or more of the following licensee discipline:
(a) Revoke a license or suspend a license either until further order of the Board or for a specified period upon any of the grounds specified in section . . . 116.21 . . . or upon any other grounds specifically provided for in this chapter for revocation of the licensee subject to the jurisdiction of the Board . . ."

Iowa Code Section 116.21 (1987) provides in part:

"Causes for revocation, suspension, or refusal to renew.
After notice and hearing . . . the [Accountancy Examining] Board may revoke or suspend for a period not to exceed two years, any certificate issued under section 116.5 [re: granting the certificate of "Certified Public Accountant"] . . . for any one or any combination of the following causes: . . .

(4) Violation of a rule of professional conduct promulgated by the Board under the authority granted by this chapter.

(5) Conviction of a felony under the laws of any State or of the United States. . . .

(10) Conduct discreditable to the public accounting profession [emphasis added].

2. In turn, the Board has caused to be promulgated administrative rules as statements of general applicability that implement, interpret and prescribe law or policy. See Iowa Code Section 17A.2(7) (1987).

193A IAC 11.6(116) provides in part:

"Other responsibilities and practices.

11.6(1) Acts discreditable. A CPA . . . shall not commit any act that reflects adversely on their fitness to engage in the practice of public accountancy. . . ."

Also, 193A IAC 12.2(116) provides:

"Causes for disciplinary action.

12.2(1) Iowa Code sections 116.21 and 116.25 set forth causes for which the Board may initiate disciplinary action against a CPA . . . registered with the Board. . . .

12.2(3) When considering alleged violations of Iowa Code subsection 116.21(11) [sic: subparagraph (10) correct citation] the phrase "conduct discreditable to the public accounting profession" shall be construed in the

light of the following Board recognition of responsibilities:

The reliance of the public in general and of the business community in particular on sound financial reporting, and on the implication of professional competence which inheres in the authorized use of a legally restricted title relating to the practice of public accountancy, imposes on a CPA, PA or AP engaged in such practice certain obligations both to their clients and the public. Those obligations include the obligation to maintain independence of thought and action, to strive continuously to improve one's professional skills, to observe, where applicable, generally accepted auditing standards, to promote sound and informative financial reporting, to hold the affairs of clients in confidence, to uphold the standards of the public accountancy profession, and to maintain high standards of the personal conduct in all matters affecting one's fitness to practice public accountancy. Habitual intoxication or addiction to the use of drugs will be considered as not maintaining a high standard of personal conduct [emphasis added].

3. Specific sanctions are authorized by 193A IAC 12.8. That rules provides in part:

"Disciplinary actions.

. . . Iowa Code section 116.21 gives the Board authority to impose the following sanctions for violations arising from the causes set forth in section 116.21:

- (a) Revoke a CPA . . . certificate . . . granted by the Board.
- (b) Suspend a CPA . . . certificate . . . granted by the Board, for a period not to exceed two years. . . .
- (d) Censure the holder of any such permit."

4. Respondent did not contest that he pled guilty and was ordered convicted on two separate counts of lascivious acts with a child pursuant to Iowa Code section 709.8 and as shown in the certified court documents in Exhibits 1 and 2. Pursuant to statute, both convictions are Class "D" felonies. Either conviction, in and of itself, would be legally sufficient grounds for revocation, suspension, or refusal to renew pursuant to Iowa Code section 116.21(5).

5. During a hearing and during closing arguments, the Respondent argued that, due to his sexual orientation, his conduct did not constitute conduct discreditable to the public accounting profession. In both instances, the Respondent's conduct concerned lascivious acts with a child. The Board, in determining whether those acts were "discreditable" considered, however, disregarded the Respondent's sexual orientation, sexual preference and homosexuality altogether. The criminal statutory provision makes

no such distinction as to homosexual and heterosexual acts between the victim and the perpetrator. The Respondent's sexual preference does not constitute mitigating circumstances as a matter of fact nor excuse as a matter of law. From Respondent's Exhibit 3, it is apparent that the Respondent held positions of trust and recognition in both civic and community organizations. The Board finds and concludes that when Respondent committed lascivious acts with children, the Respondent did not maintain the high standards of personal conduct required by departmental rule 193A IAC 12.2(3).

6. The Board finds and concludes that the Respondent's conduct and felony convictions violated Iowa Code Subsections 116.21(4), (5) and (10) as well as rule 193A IAC 11.6(1).

7. The Board notes that there is no evidence in the record that shows that, after Respondent's most recent release from incarceration, he has actively sought or participated in a continuing and regular program of psychological or psychiatric counseling or treatment. In imposing sentence, in both criminal convictions, the court recommended that Respondent herein not be considered for parole until such time as he has satisfactorily completed the sexual offenders treatment program and is of no substantial risk to the public with regard to future offenses. This Board has an identical concern. The Board finds and concludes that in the premises, revocation of Respondent's certificate would be appropriate.

Wherefore, the Accountancy Examining Board, by unanimous vote, hereby enters the following:

ORDER

It is hereby the Order of the Accountancy Examining Board of the State of Iowa that Iowa CPA Certificate Number 3378 issued to the Respondent, Douglas K. Lindaman, is hereby REVOKED. It is the further Order of the Board that the Respondent will surrender his CPA certificate to the Board within ten (10) days of the receipt of this Order if he has not already done so.

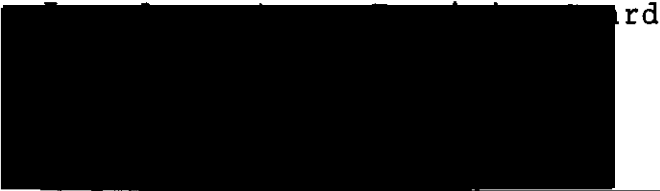
Iowa Code section 116.23(10) (1987) provides:

"Anyone adversely affected by an order of the Board may obtain review of that order by filing a written petition for review with the district court within thirty days after the entry of the order. The petition shall state the grounds upon which the review is asked and shall pray that the order of the Board be modified or set aside in whole or in part. A copy of the petition shall be immediately served upon any member of the Board and the Board shall then certify and file in the court a transcript of the record upon which the order complained of was entered . . ."

Dated this 28th day of March, 1989.



Gaylon L. Halverson
Chairperson



James R. Axt
Administrative Law Judge

JRA/jmm

cc: Douglas K. Lindaman
Theresa O'Connell Weeg

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4. Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. Show to whom delivered, date, and addressee's address. 2. Restricted Delivery
↑ (Extra charge) ↑ ↑ (Extra charge) ↑

3. Article Addressed to:
Douglas Lindaman

4. Article Number:
105509

Type of Service:
 Registered Insured
 Certified COD
 Express Mail

Always obtain signature of addressee or agent and **DATE DELIVERED.**

5. Signature of Agent

6. Signature of Agent

7. Date of Delivery

8. Addressee's Address (ONLY if requested and fee paid)

RESTRICTED

PS Form 3811, Mar. 1987 * U.S.G.P.O. 1987-176-268 DOMESTIC RETURN RECEIPT