

January 2, 1935.



State Board of Health
Jefferson City, Missouri

Attention of Mr. J. J. Ferns.

Gentlemen:

We acknowledge your request for an opinion of this office made orally upon the following matter:

"May the State Board of Health admit to examination for license, a person who was engaged in the practice of chiropody prior to the enactment of the Chiropody Act, if he is a person of twenty-one years of age and of good moral character?"

In connection with this request we have examined the memorandum brief prepared by J. Henry Caruthers. We deeply regret that we cannot agree with the conclusions reached by Mr. Caruthers in his brief.

Under the provisions of Section 9074 R. S. Mo. 1929, no one is allowed to practice chiropody in this state without being duly licensed so to do

"* * * *after examination conducted by such board or a committee thereof.* * * *"

This law became effective August 6, 1919, and from and after that date it was unlawful in this State to practice chiropody without a license duly issued by the State Board of Health. The Legislature being cognizant of the fact that many who were then practicing chiropody in this State should be permitted within certain limitations to continue such practices and to receive a license from the State so to do, provided by what is now Section 9076 R. S. Mo. 1929 that

"Every practitioner of chiropody, twenty-one years of age or over, and of good moral character, who shall make application for registration before the first day of October,

1919, and who can prove to the satisfaction of the board that he has been engaged in the practice of chiropody in this state for a period of one or more years next prior to the passage of this law, shall, upon payment of a fee of twenty-five dollars, be registered without examination and shall receive in testimony thereof a certificate signed by the chairman and secretary of said board. Applications for registration shall be made upon blanks furnished by the board and shall be signed and sworn to by the applicant. All fees received by the board shall once a month be paid by its secretary into the treasury of the state."

By means of this provision those who had practiced chiropody in this State could by complying with the formalities there provided, become licensed without examination. By this provision the Legislature provided one and only one manner in which chiropodists could become licensed who had no additional qualifications but could only present knowledge and experience gained from actual practice as justifying the issuance of a license to them. This manner was the granting of a license without examination, and application therefore was required to be made before October 1, 1919. The Legislature in its wisdom established definite time for the filing of these applications. It is not at all difficult to understand the wisdom of this requirement. In the following section, Section 9077, it is provided:

"Any person not entitled to registration as aforesaid, who shall furnish the board with satisfactory proof that he or she is twenty-one years of age or over, and of goodmoral character, and that he or she has received at least four years' high school training, or the equivalent thereof, as determined by the board, and has received a diploma or certificate of graduation from a recognized school of chiropody, having a minimum requirement of two scholastic years, embracing at least nine months of instruction each year, a minimum total of twenty-six hundred hours, shall upon payment of fee of fifteen dollars, be examined and if found qualified, shall be registered, and shall receive in testimony thereof a certificate signed by the chairman and secretary of the board."

January 2, 1935.

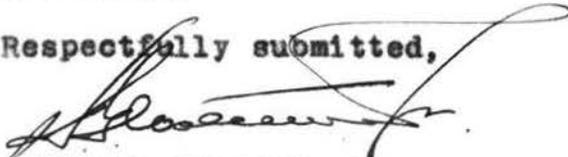
By means of the foregoing Section one who is not entitled to register under the provisions of Section 9076 must take the examination to prove his qualifications and before he may be permitted to take the examination he must furnish satisfactory proof of being twenty-one years of age, of being of good moral character, of having the equivalent of four years high school education and the possessor of a diploma issued by a recognized school of Chiropody requiring certain instruction. These statutory requirements are fixed and definite and must be complied with by each and every applicant to take the examination. It is apparent that the instant subject is not one "entitled to registration as aforesaid" as he did not make his application for registration under the provisions of Section 9076 prior to October 2, 1919.

While it is true that the Board may conduct examinations under "such rules and regulations as said Board may determine" still no one will deny that the Board does not possess the power to adopt rules and regulations contrary to specific statutory provisions. We cite no authorities for this as it is too elementary to require citations of authority. Likewise, it is only when a statute is ambiguous and uncertain that rules of construction may be applied. In the instant case the provisions of the law are clear, leaving no room for construction.

CONCLUSION.

It is therefore the opinion of this office that the Board of Health cannot lawfully admit to examination an applicant who does not possess the requirements set forth in Section 9077 R. S. Mo. 1929, to-wit, twenty-one years of age, good moral character, the equivalent of four years high school training, a diploma of graduation from a recognized school of Chiropody requiring two scholastic years of nine months each, and a minimum total of 2600 hours.

Respectfully submitted,


HARRY G. WALTNER, Jr.,
Assistant Attorney General

APPROVED:

ROY MCKITTRICK,
Attorney General

HGW:MM