

Re: BOARD OF HEALTH - Right to disclose results of
examinations.

June 21, 1937.

Herman S. Cove, M. D.,
Director - Medical Licensure,
Jefferson City, Missouri.



Dear Sir:

This Department is in receipt of your request for
an opinion as to the following:

"Will you kindly give us an opinion as to
whether or not it would be permissible to give
out grades to applicants who have passed the
State Board of Health medical examination if
they should request them.

Kindly give us this information at your
earliest convenience."

Section 9113 R. S. Mo. 1929 provides for the examination
of applicants to practice medicine or surgery in Missouri. In
this section it is expressly provided that "The medical examina-
tion except that part which is practical to be in writing and
the questions and answers shall be kept on file by the State
Board of Health, subject to public inspection *****".

In the recent case of King v. Wolfe, et al, decided by
the Super. Ct. of California May 11, 1937 (not yet officially
published) it was held that a rule of the Civil Service Commission
under which the inspection of examination papers was discretionary
with the Commission was reasonable and not void on the theory that
it conflicted with a statute of California giving to citizens the
right to inspect public records. The Court held that the
Commission in denying inspection of papers acted in the exercise
of its discretion and that its exercise of such discretion could
not be controlled by the Court.

While this case is not precisely in point, it is
indicative of the attitude of the Courts with respect to regula-
tions prescribed by a Board invested with discretionary powers.
In the case of State ex rel v. Goodier, 195 Mo. 551, the Court said:

"The duties of the Board are of an administrative
or ministerial character, and therefore as long as
its acts are within the scope of the exercise of a
reasonable discretion it is free to act."

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In view of the provisions of Section 9113, supra, requiring the Board of Health to keep the questions and the answers made thereto by applicants on file subject to public inspection, it is the opinion of this department that it is permissible to disclose the grades achieved by applicants on examinations and that such act of the Board would be within the scope of a reasonable discretion.

Respectfully submitted,

JOHN W. HOFFMAN, JR., Assistant
Attorney General.

APPROVED:

(Acting) Attorney General