

PHYSICIANS: Board of Health may not admit applicant for registration by reciprocity who does not comply with statute and rules of board, as long as said rule remains in force.

September 3, 1937

9-4



Dr. Herman S. Grove, Director
Medical Licensure
State Board of Health
Jefferson City, Missouri

Dear Sir:

This department is in receipt of your letter of August 27, 1937, in which you request an opinion, as follows:

"Will you kindly give me an opinion in regard to issuing license by reciprocity to graduates of grade "A" schools who are legally licensed to practice medicine in another state, have had one year's internship in a recognized hospital in the State of Missouri or another state, but have not had one year's practice in the state in which they were licensed."

Section 9113, R. S. Missouri, 1929, provides the manner and general procedure to be followed by the applicant and the State Board of Health in granting to the applicant a license to practice medicine. In part, this section is as follows:

"And it is further provided that the said board of health may under the regulations established by the board admit without examination legally qualified practitioners of medicine who hold certificates to practice medicine in any state or territory of the United States or the District

of Columbia with equal educational requirements to the State of Missouri and that extend like privileges to legally qualified practitioners from this state upon the applicant paying a fee of fifty dollars (\$50.00)."

It will be noticed that the legislature at no place in this section required that those applicants desiring admission by reciprocity have anything other than a license to practice medicine in another state and that the state from which the applicant received his license have equal standards of admission and is a state which reciprocates with the State of Missouri.

The requirement of one years' practice, by the applicant for reciprocal medical registration, in addition to the requirements made in Section 9113, R. S. Missouri, 1929, seems to be found in a rule promulgated by the State Board of Health in accord with Section 9113, supra, wherein it is provided that the "said Board of Health may under the regulations established by the board, admit without examination" an applicant for reciprocal medical registration. This rule is in part, as follows:

"A certificate of registration or license issued by the proper board of any state may be accepted as evidence of qualification for reciprocal registration in any other state; provided, that the holder of such certificate or license has been engaged in the reputable practice of medicine in such state at least one year."

This rule appears as qualification No. II under the heading, "Basis for Reciprocal Medical Registration" in the application for certificate required to be executed by the applicant. No similar provision appears in the pamphlet entitled "Instruction to Physicians" under the heading on page 6, "By Reciprocity". We, therefore, assume that the above quoted rule is the only rule on this particular phase of reciprocal registration that the State Board of Health has made.

The statute does not make the requirement of one years' practice in the state in which the applicant desiring reciprocal registration is licensed to practice, but this is done solely by the rule promulgated by the board.

The authority to make such a rule certainly carries with it the authority to change, revoke or promulgate a new rule covering the same subject at such times as the board may deem it necessary or advisable.

In State ex rel Crites v. Clark, 230 S. W. 609, where a rule promulgated by the State Board of Health was before the court, it is said:

"Dr. Crites, the relator here, filed his application for examination some 10 days before the date fixed for such examination. The statute (Section 7332, R. S. 1919) provides that his application shall be made to the State Board of Health 30 days prior to the examination. The rules of the board allowed such application to be made 10 days before the time of the examination. The rules conflicted with the statute, but the board is not in a position to urge this question. The applicant complied with their rules."

This case was a mandamus action by the applicant to compel the board to grant him an examination to which the board, along with other defenses, had set up the applicant's failure to comply with the statute in filing his application for examination.

The import of this decision seems to be that once the board makes a rule they will be bound by the same as long as said rule is in force and cannot make exceptions to their rules and disregard the same in one case, yet adhere to them on other cases. To do this would be highly discriminatory.

In this opinion, we are not undertaking to determine the reasonableness or unreasonableness of said rule, we are merely pointing out that the board has the right and authority to make reasonable rules concerning reciprocal registration and we might say that authority to make such rules confers no authority to change, alter or amend the provisions of the act itself and thereby deprive one of a right given by the act. U. S. v. Sawyers, 10 Fed. (2d) 416.

It is, therefore, the opinion of this department that the state board of health may amend, revoke or promulgate new rules; concerning reciprocal registration to practice medicine, at any time they deem it necessary or advisable, but that as long as the present rule is in force, it is binding upon said board as well as the applicant and that said board may not disregard the same in special instances when they may be inclined to do so.

Respectfully submitted,

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APPROVED:

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