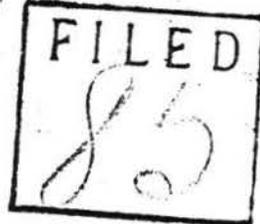


BOARD OF PHARMACY: If April examination is declared void, applicants found guilty of no wrong should be given opportunity to retake examination prior to September 6th, 1937.

August 27, 1937



Honorable Lloyd C. Stark
Governor of Missouri
Jefferson City, Missouri

Dear Governor Stark:

This will acknowledge receipt of your letter requesting an opinion from this department, which reads as follows:

"Please advise me if applicants, who took the Board of Pharmacy examination last April and were not reported as cheating, should be re-examined before September 6, 1937."

Under date of June 21, 1937, W. H. Ellis, President Missouri State Board of Pharmacy, requested an opinion on the question of the right of the Missouri State Board of Pharmacy to void an examination held in St. Louis, Missouri, on April 25th and 26th, 1937, because of alleged wide spread cheating of the candidates taking the examination. In answering this opinion request under date of June 21, 1937, we reached the following conclusion:

"From the foregoing, we are of the opinion that the question of whether a candidate has passed a 'satisfactory examination' is within the sound discretion of the Board of Pharmacy, who may exercise its judgment whether it shall void the examination held in St. Louis, Missouri, on April 25th and 26th because of the charge of wide spread cheating, or whether it shall order a

new examination to allow all persons the privilege of taking the examination for assistant and registered pharmacist under the existing law."

However, in the course of our opinion, we made the following observation:

"In passing on your questions it occurs to us that if the Board of Pharmacy can actually determine from the group taking the examination the individuals who conducted themselves in a proper manner and were not guilty of any cheating, and further made a satisfactory grade so as to be eligible for a license, it would be most unfair to void the examination and require them to submit to a new examination. We must necessarily, however, restrict ourselves to applying the law to the facts as presented in your letter."

The writer is not advised whether or not the examination held last April has been voided by the Board of Pharmacy. If it has not been, we are still of the opinion that if it can be determined that any applicant conducted himself in the proper manner and made a satisfactory grade, he would be entitled to be licensed as a pharmacist or assistant pharmacist as the case may be.

If the examination is declared void, your question, as we understand it, is whether or not the applicants taking the examination, and not reported as cheating, should be given an opportunity to again take the examination before September 6, 1937, which is the effective date of the new law relating to the qualifications of pharmacists, which also provides that no further licenses shall be issued for assistant registered pharmacists.

Under the provisions of Section 13142, R. S. Mo. 1929, which remains in effect until September 6, 1937, any person

twenty one years of age, who had been licensed as assistant pharmacist for not less than two years prior to his application, who had four years experience in pharmacy under instruction of a licensed pharmacist and who passed a satisfactory examination by or under the direction of the Board of Pharmacy, was entitled to be licensed as a pharmacist.

The qualifications for a license as an assistant pharmacist under said section were that he be eighteen years of age and have a special preliminary general education and not less than two years experience in pharmacy under the instructions of a licensed pharmacist, and that he pass a satisfactory examination by or under the direction of the Board of Pharmacy.

After September 6th, under the provisions of Section 13151, Laws of Missouri 1937, page 230, an applicant for examination for a license to practice pharmacy must be twenty one years of age and have attended high school for four years or its equivalent and have had one year of practical experience in a retail drug store under the supervision of a registered pharmacist, and must also be a graduate of a school or college of pharmacy, whose requirements for graduation are satisfactory to the Board of Pharmacy. Said section further provides that no further licenses or examinations shall be issued or given by the State Board of Pharmacy for assistant registered pharmacists.

Undoubtedly, many of the applicants who took the examination in St. Louis last April do not have sufficient qualifications to take the examination after the effective date of the new Act, which is September 6th. Also, undoubtedly, many of the applicants at the last examination have not been convicted of cheating or improper conduct. To declare said examination void without giving these applicants an opportunity to retake the examination prior to the effective date of the new Act would be manifestly unfair in that it would deprive certain applicants, convicted of no wrong, from ever becoming pharmacists, although they had the qualifications necessary at the time they took the examination and received satisfactory grades. Many of these applicants have been working to become pharmacists for a number of years and now on the threshold of their ambitions they will be deprived of the opportunity of doing so, due to the increased qualifications, unless they are permitted to retake this examination prior to September 6th.

August 27, 1937

As one applicant stated to the writer, speaking for himself and others similarly situated:

"Our whole future may be ruined"

In conclusion, we point out the provisions of Section 13142, R. S. Mo. 1929, that the Board of Pharmacy may prior to September 6, 1937, hold an examination for the purpose of licensing pharmacists and assistant pharmacists and that anyone, who has the qualifications specified in said section, is entitled to take the examination either as a pharmacist or as assistant pharmacist and upon passing a satisfactory examination is entitled to be licensed as such. After September 6, 1937, under the provisions of Section 13151, Laws of Missouri, 1937, page 230, all applicants for licenses to practice pharmacy must have the qualifications specified in said section and no further licenses or examinations can be issued or given by the Board of Pharmacy for assistant registered pharmacists.

It is, therefore, our opinion that it would be most unfair if the April examination is declared void, not to allow applicants, who had the proper qualifications and took the examination at that time and who were found guilty of no misconduct, an opportunity to retake the examination prior to the effective date of the new Act increasing the qualifications of applicants to take the examination to practice pharmacy in this state.

Respectfully yours,

J. E. TAYLOR
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General
JET:rt

