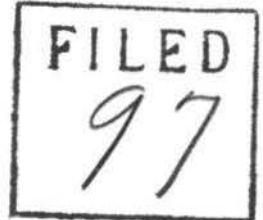


BOARD OF
PHARMACY:

Rule or regulation with respect to
renewal of licenses of pharmacists in
armed forces.

September 15, 1942



Mr. Ted Willard, Secretary
State Board of Pharmacy
Camdenton, Missouri

Dear Sir:

On September 9, 1942, you requested an
opinion of this department upon the following:

"A situation has arisen in Pharmacy in
Missouri, and I presume in other states
as well, wherein men who are called into
the armed forces of our country, and in a
number of instances being sent to foreign
lands, are unable to renew their license
annually, as provided in Section 10009,
Revised Statutes of Missouri.

"There is no unwillingness on the part of
these men to renew, but due to fact that
they have no permanent address and quite
frequently are unable to get mail of any
sort, it is impossible apparently for them
to renew their license.

"Section 10012, provides in the first sen-
tence:

'The Board of Pharmacy shall
have a common seal, and shall
have power to adopt such rules
and by-laws not inconsistent
with law as may be necessary
for the regulation of its pro-
ceedings.'

"Under this section I would like your opinion as to whether the Board of Pharmacy would have the authority to adopt a regulation exempting men in the Armed Forces of our Nation from paying their renewal fees in the time specified by law."

A portion of Section 10009 R. S. Mo., 1939, provides:

" * * * * * Every licensed pharmacist or permit holder who desires to continue in the practice of this profession shall, within thirty days next preceding the expiration of his license or permit, file with the board an application for the renewal thereof, which application shall be accompanied by the fee hereinafter prescribed. If the board shall find that the applicant has been legally licensed in this state and is entitled to a renewal of license, or to a renewal of such permit, it shall issue to him a certificate attesting that fact. If any pharmacist shall fail for a period of sixty days after the expiration of his license, to make application to the board for its renewal, his name shall be erased from the register of licensed pharmacists, and such person, in order to again become registered as a licensed pharmacist, shall be required to pay the same fee as in the case of original registration: Provided, that no application for the renewal of a license shall be granted after a period of two years after its expiration, and if any pharmacist fail within that time to make application to the board for a renewal of his license, he shall be subject to

all of the provisions of this chapter re-
gulating the issuance of licenses. * * *
* * * * *

This Section, in clear terms, provides:

- (1) Every pharmacist should apply for a renewal of registration and license and pay the required renewal fee within thirty days before and not more than sixty days after the expiration of his or her license.
- (2) A pharmacist failing to apply for a renewal until after sixty days of the expiration of his or her license shall be stricken from the register of licensed pharmacists and to become re-registered and re-licensed upon application therefor he shall pay the fee required for original registration.
- (3) No license may be renewed that has expired more than two years before an application for renewal is made.
- (4) One whose license has not been renewed for two years or more is required to apply for and take an examination in the same manner as a person never before licensed.

Where the language of a statute is plain and unambiguous it may not be construed but is given effect as written. St. Louis Amusement Company v. St. Louis County, 147 S. W. (2d) 667, 347 Mo. 456; State ex rel R. R. Co. v. Shain, 106 S. W. (2d) 898; State ex rel insurance Co. v. Lucas, 153 S. W. (2d) 10.

The Board of Pharmacy is authorized by Section 10012 R. S. Mo., 1939, to adopt rules and by-laws. The pertinent portion of that Section is:

"The Board of Pharmacy shall have a com-

mon seal, and shall have power to adopt such rules and by-laws not inconsistent with law as may be necessary for the regulation of its proceedings and for the discharge of the duties imposed under this chapter, * * * * *

By the very terms of this authorization such rules and "by-laws" must be consistent with "the law" and cannot be contrary to the pharmacy statutes. This, of necessity, follows from the wording of the above partially quoted Section.

Futhermore, the board has no power to waive the payment of the fees required for registering and licensing pharmacists as provided by Section 10015 R. S. Mo., 1939. Any attempt to do so would contravene a definite statutory requirement.

However, a rule or regulation (by-law) might be promulgated by the board to the effect that all pharmacists in the armed forces failing to make application for their renewal of licenses and registration sixty days after the expiration of their license and registration upon making application within two years and paying the required fee should be re-registered and re-licensed. Such rule would conform to and be in furtherance of the statutory requirements. It would, in addition, without doing violence to the statute, be of assistance to those pharmacists who serve their country in its perilous crisis.

As has been pointed out recently by the Supreme Court of Missouri, "Let no citizen be penalized because he is a patriot. Let us therefore

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keep faith with those who fight for us." State ex rel McGaughey v. Grayson, 163 S. W. (2d) 335, l. c. 342. However, the State Board of Pharmacy is of statutory origin and cannot change the fixed requirements of a licensing act; only the Legislature may do this.

CONCLUSION

It is the opinion of this department that while the State Board of Pharmacy is authorized to promulgate rules and by-laws not inconsistent with the Pharmacists' Act and in furtherance thereof, yet it may not waive the clear and definite terms of the licensing and registering renewal statute. It may, however, in keeping with the terms of such statutory enactment, by a rule or by-law allow all pharmacists in the armed forces failing to make application for renewal of license and registration sixty days after the expiration of license and registration, upon making application within two years and paying the required fee to be re-registered and re-licensed.

Respectfully submitted,

VANCE C. THURLO
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APPROVED:

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