

BOARD OF PHARMACY: May exercise its sound discretion as to whether applicant has passed a "satisfactory examination."

June 21, 1937. 6-24



Mr. W. H. Ellis, President,
Board of Pharmacy,
Vandalia, Missouri.

Dear Mr. Ellis:

We wish to acknowledge your letter of June 17th, wherein you state as follows:

"A situation has developed with the Missouri State Board of Pharmacy in connection with certain examinations that have been held and those that are to be held, which requires advice from your department.

"The Missouri State Board of Pharmacy held an examination in St. Louis, Missouri, on April 25th and 26th. Immediately after that examination, certain charges were filed with Governor Lloyd C. Stark, stating among other things that cheating was prevalent in a large measure.

"Immediately thereafter, Governor Stark appointed a Committee of Inquiry to sift these charges and make a final report to him. That report has been filed with Governor Stark and all hearings have been concluded.

"This hearing developed testimony from many students of the St. Louis College who stated under oath they actually saw numbers of people taking the examination whom were

cheating. Further testimony brought out the fact that Members of the Board of Pharmacy actually found much cheating and these applicants who were caught were finally failed for cheating.

"The grades for this examination have been tabulated and are ready to hand out. There has been some thought among many people who were interested that this examination should be held void. The question presents one involving legal advice.

"A bill has been passed by the legislature, known as CS. for H.B. 265 that has some bearing on this examination. This bill was truly agreed to and finally passed and is now in the hands of the Governor for his approval.

"I wish you would look into this matter for me and give me an opinion as to whether it is within the legal right of the Missouri State Board of Pharmacy to void this examination.

"I was in Jefferson City this week and called in your office to discuss this matter. In conversation with Governor Stark, he expressed the hope that I would talk to you and get your advice on the subject. The Board of Pharmacy is also wondering whether or not to postpone any further examinations until the H.B. 265 is signed by the Governor. As the matter stands, it might involve further difficulties by holding an examination now under the existing law and within three months, the candidates who pass may be eligible for a certificate without an examination.

"The writer plans to leave next Thursday for an extended vacation, and I hope that you can set me right before that time. I will now restate the points I wish cleared up:

1. Shall the Board of Pharmacy void the examination held in St. Louis April 25th and 26th because widespread cheating was charged?
2. Shall the Board of Pharmacy order another examination at once to allow all persons the privilege of taking the examination for Assistants and Registered Pharmacist under the Existing law?"

Section 13142, R. S. Mo. 1929, provides that in order to be licensed as a pharmacist or assistant pharmacist, the applicant must, among other things, "pass a satisfactory examination by or under the direction of the Board of Pharmacy":

"In order to be licensed as a pharmacist within the meaning of this chapter, an applicant shall be not less than twenty-one years of age, and, if his application be filed with the secretary of the board of pharmacy on or after the first day of January, 1912, he shall have been licensed as an assistant pharmacist for not less than two years prior to his application for license as a pharmacist, and he shall present to the board satisfactory evidence that he has had four years' experience in pharmacy under the instruction of a licensed pharmacist, and shall pass a satisfactory examination by or under the direction of the board of pharmacy: Provided, that if the applicant for a license as a pharmacist be a graduate of a school or college of pharmacy, whose requirements for graduation are satisfactory to and approved by the board of pharmacy, it shall not be required that he pass any examination or that he shall have been an assistant pharmacist. In order to be licensed as an assistant pharmacist within the meaning of this chapter, an applicant shall be not less than eighteen years of age, shall have a sufficient preliminary general education, and shall have not less than two years' experience

in pharmacy under the instruction of a licensed pharmacist, and shall pass a satisfactory examination by or under the direction of the board of pharmacy: Provided, however, that in the case of persons who have attended a reputable school or college of pharmacy the actual time of attendance at such school or college of pharmacy may be deducted from the time of experience required of pharmacists and assistant pharmacists."

The status of a board which has the power to examine is well stated in the case of State ex rel. Granville v. Gregory, 83 Mo. 123, l. c. 136, wherein the Court said:

" * * * the board of health, in the discharge of duties in reference to the issuance of certificates, is engaged in the performance of those things which essentially partake of a judicial nature, requiring the examination of evidence and passing on its probative force and effect, requiring the exercise of judgment and the employment of discretion."

A similar statement of the rule is expressed in the case of State ex rel. Lentine v. State Board of Health, 334 Mo. 220, 65 S. W. (2d) 943, l. c. 949, thus:

" * * * the question whether the acts or conduct charged are such as to constitute unprofessional and dishonorable conduct or render the licentiate a person of bad moral character within the purview of the statute 'calls for the exercise of judgment and sound discretion' on the part of the board of health."

In the case of State v. Rosenkrans, 30 R. I. 374, 75 Atl. 491, l. c. 497, the applicant, in order to practice dentistry, was required to "undergo a satisfactory examination".

The Court in pointing out that this was a matter within the sound discretion of the Board of Examiners, said:

"No attempt is made in the statutes to specify what number of questions must be propounded to any candidate for examination upon each or any of the above mentioned subjects, nor is it stated whether the same number of questions must be answered by every candidate; nor are there any provisions declaring what percentage of the questions submitted must be answered correctly by any candidate in order to pass the examination; nor is it provided that the identical questions shall be put to each applicant; nor is there any provision that the percentage required shall always remain the same, that the standard of proficiency and efficiency shall never be advanced. In other words, much must be left to the sound discretion of the board of examiners."

In the case of *Tate v. North Pacific College*, 140 Pac. 743, l. c. 745, it is required that before a student receives his diploma and degree, he shall "pass satisfactory examinations." The Court in holding that this meant examinations satisfactory to the faculty, whose duty it was to conduct the examinations, said:

"Among the requirements for a diploma and a degree set forth in the catalogue of the defendant, and set out supra, it is required that the candidate shall "pass satisfactory examinations." This means that his examinations shall be satisfactory to the faculty, whose duty it is to conduct the examinations."

A study of our statutes relating to the examination of applicants desiring to be licensed as pharmacists or assistant pharmacists does not reveal what manner or number of questions that are to be propounded to the applicants,

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whether they shall be written or oral, whether personally supervised in case of written examinations, or whether the "honor system" with no supervision be employed. The only requirement of the statute is that the applicant "pass a satisfactory examination by or under the direction of the board."

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.

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 widespread 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.

Respectfully submitted,

MAX WASSERMAN,
Assistant Attorney General.

APPROVED:

J. E. TAYLOR
(Acting) Attorney General.

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