MEDICINE - Qualifications necessary to right of applicant for license to practice medicine to be examined for registration by the State Board of Health.

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October 8, 1934.

The State Board of Health of Missouri,
Jefferson City, Missouri.

Attention: E. T. McGaugh, M. D.
State Health Commissioner

Gentlemen:

A request for an opinion has been received from you under date of September 12, 1934, such request being in the following terms:

> "The State Board of Health of Missouri desires that you render them an opinion upon the following subject:
>
> 'Is it mandatory upon the Missouri State Board of Health to accept, for examination, students who have graduated from some foreign medical school, provided that they are passed upon favorably by the New York Medical Association?' "

I

STATUTORY PRELIMINARY REQUIREMENTS FOR EXAMINATION.

R. S. Missouri 1929, Section 9113, provides that persons desiring to be examined for the purpose of securing a license to practice medicine in this State must, before they are entitled to be examined on their substantive medical knowledge, satisfy the State Board of Health that they possess three preliminary requirements, these being (1) high school education or its equivalent, (2) a diploma from a reputable medical college with a certain type of graduation requirement, and (3) good moral character. That part of such statute so providing is as follows:

> "All persons desiring to practice medicine or surgery in this state, or to treat the sick or afflicted, as provided in section 9111 of this article, shall appear before the state board of health, at such time and place as the board may direct and there shall be examined as to their fitness to engage in such practice. All persons

> appearing for examination shall make application in writing to the secretary of the said board thirty days beforethe meeting. They shall furnish satisfactory evidence of their preliminary qualifications, to-wit, a certificate of graduation from an accredited high school, or its equivalent. They shall also furnish satisfactory evidence of having attended throughout at least four terms of thirty-two weeks of actual instruction in each term and of having received a diploma from some reputable medical college that enforces requirements of four terms of thirty-two weeks of actual instruction in each term, including two years' experience in operative and hospital work at time of graduation; provided that the time of graduation has been since March 12,1901, and two years' requirements if the date of the graduation is prior to March 12, 1901, and shall also furnish evidence of good moral character."

While the language of the statute would not require the elucidation, we quote from the opinion of the Court in the case of State ex rel. Abbott v. Adcock, 225 Mo. 335, 124 S.W. 1100 (1910), which in discussing such statute, says:

> "By reading that section of the act it will be seen that it requires three things of each applicant who desires to be examined, touching his qualifications to practice medicine and surgery in this State, namely: first, that he shall make application in writing to the secretary of the board thirty days before the meeting thereof; second, that he furnish to the board satisfactory evidence of his scholastic qualifications, as therein provided for; and, third, that he shall also furnish to the board satisfactory evidence of having received a diploma from some reputable medical college of four years' requirement at the time of his graduation.
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> The act mentioned does not undertake to state what medical colleges are or what are not reputable within the meaning thereof; but by clear implication it leaves that question for the determination of the Board of Health. This is made manifest by the act requiring the proof of reputableness to be furnished to the board when the applicant presents himself for examination, and by withholding from the board the authority to issue the license until such satisfactory evidence is furnished. There is no pretense in this case that relators or any of them furnished or offered to furnish any evidence

> whatever tending to show that the Barnes University, the one from which they had graduated and from which they hold their diplomas, was a reputable medical college within the meaning of that act. In our opinion the language of this act is susceptible of no other construction than that it placed the burden upon the relators, when they presented themselves for examination before the board, to prove to its satisfaction by satisfactory evidence the reputableness of Barnes University, and especially the medical department thereof." (225 Mo. 356-7).

We assume from your letter that the first and third of the preliminary requirements are not in question and that the only question raised is as to the second preliminary requirement, i.e. the reputability and graduation requirements of the medical school attended.

II

WHAT AN APPLICANT FOR EXAMINATION MUST SHOW AS TO HIS MEDICAL COLLEGE.

To enable an applicant for a license to practice medicine to the right to be examined on his substantive medical knowledge, he must be able to satisfy the Board of Health that he has received a diploma from a medical college having at least the requirements of the statute set out above, and he must likewise satisfy the Board that such college is a "reputable" medical college. The quotation above from State ex rel. Abbott v. Adcock shows that the burden of proving these facts is on the applicant, and R. S. Missouri 1929, Section 9114, provides that this question of fact is left to the determination of the Board. Such section provides as follows:

> "The question as to whether any medical school is one entitled to recognition, by the state board of medical examiners, as a medical school of good standing and the action of said medical examinats in refusing a license to any applicant is hereby declared to be a question of fact and any person aggrieved by reason of the action of the board, shall have the right to have such question reviewed by suing out a writ of certiorari in the circuit court and such question shall be tried de novo by the court issuing such writ, and the court of review shall render such judgment as should have been rendered in the first instance."

See also State ex rel University v. North, 316 Mo. 1055, 294 S. W. 1012 (1926).

The Board of Health cannot refuse to hear the applicants on whether or not their school is entitled to recognition. In the case of State ex rel. Abbott v. Adcock, supra, the Board had adopted in 1907 a rule eliminating the burden of proof on the applicant if the college from which he had graduated had certain minimum requirements. The Court in discussing this rule said:

> "But suppose, for argument's sake, we are in error in our views before expressed regarding the meaning and object of said rules of the board establishing said standards, and that it was the intention of the board to thereby notify, in advance, all persons who might present themselves for examination for licenses to practice medicine and surgery, that it would examine no one except those who presented a diploma from some one of the medical colleges which had adopted said standards. Still, that would no more excuse the applicant for examination from tendering to the board such evidence as he might have, tending to prove that his alma mater was a reputable school within the meaning of said act, than would the adoption of a rule by a judge upon the bench, promulgated a year in advance, to the effect that on and after a certain date he would try no case except where the plaintiff held a certificate from a minister of the Gospel stating that he belonged to a church which believes in and teaches the Christian religion, would excuse the plaintiff from offering whatever evidence he might have tending to prove his case, even though he held no such certificate. Both, such rules of the board and of the court, would be illegal and void, and would constitute no legal bar to the applicant's right to stand the examination for his license, nor to the plaintiff's right to have his case tried according to law." (225 Mo. 561).

If such a rule of the Board is still in effect and if the applicant is able to show that the New York Medical Association has as high standards as the minimum standards required in such rule, this case would seem to stand for the proposition that this would be sufficient proof by the applicant for his examination and license. In any event, whether such a rule is in effect or not, the evidence as to the qualification of the school from which applicant has received a diploma must be heard by the Board. This is settled by the same case in which it was argued that the rule above discussed was void on the ground that properly construed it prohibited the right of the applicant to offer proof as to the qualifications of his medical college. The Court said that such a construction was improper and the true construction of the rule

was merely to eliminate the trouble and expense to applicants of making complete proof where the medical college from which they had graduated met the minimum requirements of the rule. The Court then continued:

> "That rule simply provides that all medical colleges, wherever located (and not simply those situate in this state), which should on or before October 1st, 1907, conform to the standards specified in the schedule of minimum requirements, adopted by the board on July 11th, 1907, 'should be rated and classified as accredited and reputable, and whose students, after being graduated therefrom, should be admitted to the examination of the State Board of Health for licenses to practice medicine and surgery in the State of Missouri,' without being required to furnish other proofs of reputableness, and thereby save each of them the time, cost and expense of furnishing the proofs required of them by said act." (225 Mo. 359).

This last quotation likewise settles the fact that whether the medical college is in Missouri or elsewhere is immaterial.

In conclusion, it is our opinion that before an applicant for a license to practice medicine in this State is entitled to an examination on his substantive knowledge of medicine, he must as a preliminary requirement satisfy the State Board of Health that he has a diploma from a medical college having the statutory requirements for graduation of R. S. Missouri 1929, Section 9113, thatthe reputability of such college is a question of fact to be determined by the Board, but that regardless of any rule which the Board might adopt, it must hear and examine evidence of the applicant as to whether or not the medical college from which he has a diploma conforms to the statutory requirements, and it is our further opinion that if there is at present in force a rule of the State Board of Health dispensing with this burden of proof where the medical college from which the applicant has a diploma has certain minimum requirements and the applicant is able to satisfy the State Board of Health that the requirements of the New York Medical Association are as high as the requirements of such rule in every respect, that the applicant would have a right to be examined as to his substantive medical knowledge without making further proof as to his college, assuming that the applicant is able to satisfy the Board that he has had a high school education or its equivalent and is of good moral character.

Very truly yours,

APPROVED:

Edward H. Miller
Assistant Attorney-General

Attorney-General