MEDICINE: STATE BOARD OF HEALTH: Applicant not entitled to privilege of taking medical examination unless he is able to qualify under law as it presently exists.

11-18

November 15, 1935

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

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

Gentlemen:

We acknowledge receipt of your letter of November 7, 1935, requesting an opinion of this office, which is as follows:

> "The Board has referred this matter to your office for an opinion:
>
> "It seems that Amedeo Pascuita graduated from the P. and S. when the word, 'Reputable,' was left out of the law. He slept on his rights relative to asking for the privilege of taking the examination. He now comes in and wants to take the examination, and predicates his rights with the statement that he was eligible to take the examination when he graduated, and should not be denied at this time.
>
> "The Board asks that you give them an opinion whether or not they should grant him the privilege of taking the examination."

At the 41st General Assembly in the year 1901 an act was passed regulating the practice of medicine and surgery. No requirement was made as to the kind of medical college the applicant must have attended to permit him to take the examination. At the 44th General Assembly the act

was amended so as to require evidence of having received a diploma from some "reputable" medical college.

Laws of Missouri, 1907, page 360, states in part that

> "They shall also furnish satisfactory evidence of having received a diploma from some reputable medical college * * *."

The requirement is set out in the Revised Statutes of Missouri, 1929, in the following language:

> "They shall furnish satisfactory evidence * * * of having received a diploma from some reputable medical college * * *."

The question is, assuming the applicant for examination could have qualified under the act as passed by the 41st General Assembly, where no requirement was made as to the production of evidence of having received a diploma from a "reputable" medical college, but failed to ask for the privilege of taking the examination, can he now come in and demand that his rights be predicated on the statute as it existed in 1901?

In the case of State v. State Board of Dental Examiners, 1 Ohio Nisi Prius (New Series) 449, reported in Vol. 14 Ohio Decisions, Vol. 11 Nisi Prius 245, l. c. 249, the court in holding that a person who is qualified to receive a license or certificate under a certain statute is not entitled to a license or certificate thereunder upon an application made after its repeal, said:

> "Relator had no inherent or inalienable right, and such is not claimed for him. His right or privilege was one created by statute. When he located in the state, he, together with others under like circumstances, was afforded the privilege under the provisions of the act of 1892, to apply to said state board of examiners for a certificate to practice dentistry, and by complying with the re-

quirements therein provided, he could obtain such certificate without examination. He did not see proper to take advantage of this privilege, and made no application until after the repeal of that law. In April, 1902, the legislature saw proper to raise the standard for those persons applying to practice dentistry in the state, and so amended the law as to require an examination for all persons in relator's class before they could receive a certificate of registration from the state board of examiners.

"There is no question but that the law-making power can continue to raise the standard in matters of this kind as often as the necessities may require. That is so held in Dent v. West Virginia, 129 U. S. 114 (9 Sup. Ct. Rep. 231), a leading case, and one that has been followed by the courts in many of our states.

* * * * *

"He simply permitted the time to pass within which he could have perfected his rights under said act, and having done so, the privilege accorded him under that act was taken away by its repeal, and by the amended act another privilege, with additional burdens, was substituted.

"My opinion is that relator has now no vested rights under said act of 1892, and to entitle him to a certificate of registration he must apply in accordance with the provisions of the amended act of 1902."

CONCLUSION

From the foregoing, we are of the opinion that Amedeo Pascuita, although qualified under a former statute to take the examination, having failed to take advantage of the privilege, is not entitled to the privilege at this time unless he is able to qualify under the law as it presently exists.

Respectfully submitted,

J. E. TAYLOR,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General.

MW:HR