

BOARD OF HEALTH:
COSMETOLOGISTS, HAIR-
DRESSERS AND MANICURISTS:
RECIPROCITY:

Board of Health may issue licenses of reciprocity without examination to cosmetologists, hairdressers and manicurists if any such applicant is either duly licensed in another state or has practiced for at least five years.

May 1, 1940

Honorable Harry F. Parker
State Health Commissioner
Jefferson City, Missouri

Dear Dr. Parker:

We have received your letter of April 23rd which reads as follows:

"Will you kindly give us an opinion on Section 9100, reciprocity with other states, with reference to Cosmetology, Hairdressing and Manicuring.

"There seems to be a difference in the interpretation of this Section. My interpretation is that an applicant must be licensed in another state which has requirements equal to those in force in this state and must have practiced continuously for five years before being granted license to practice Cosmetology, Hairdressing or Manicuring in this state by reciprocity. The Director of the Moler System of Colleges, F. W. Agney, contends that Section 12 or 9100, leaves two methods open in securing license by reciprocity. First method is producing evidence that one has met the requirements of a state with equal requirements to this state. The second method is showing proof of five years' experience as an operator in a state where they have no standards or a state law."

Section 9100, R. S. Missouri 1929, deals with the powers given to the State Board of Health as to reciprocity with other states in connection with the licensing of cosmetologists, hairdressers and manicurists. This section reads as follows:



"The state board of health may dispense with examinations of applicants as provided in this article, and may grant certificates of registration under respective sections upon the payment of the required fees, provided that such applicant has complied with the requirements of another state, territory, District of Columbia or foreign country, state or province wherein the requirements for registration are substantially equal to those in force in this state at the time application for such certificate is filed and that extend like privileges or upon due proof that such applicant has continuously practiced the classified occupation for which a license is applied for at least five years in a foreign state or country immediately prior to such application and upon the payment of a fee of fifteen dollars."
(underlining ours)

It will be observed that the legislature has stated that the State Board of Health may dispense with examinations of applicants and may issue certificates of registration without an examination provided the applicant has complied with the requirements of another state wherein the requirements for registration are substantially equal to those of this state, or such certificates may be issued without examination if the applicant has continuously practiced the classified occupation for at least five years in such foreign state. By the use of the word "or" as it is used, the legislature undoubtedly intended to give the Board the right to issue a license without examination under either of two sets of conditions. The first condition is if the applicant has fully complied with the laws of another state which are equal to our own, or second, if the applicant has practiced continuously for at least five years in another state immediately prior to the application.

The word "or" was defined by the Supreme Court of Missouri in the case of State v. McGee, 83 S. W. (2d) 98, l. c. 110, as follows:

"* * * Or 'is a disjunctive participle that marks an alternative generally corresponding to "either," as "either this or that." 46 C. J. 1124, Section 1; State v. Combs (Mo. Sup.) 273 S. W. 1037, 1039 (1); Dodd v. Independent S. & F. Co., 330 Mo. 662, 671 (8), 51 S. W. (2d) 114, 118 (9). 'A disjunctive conjunction coordinating two or more words or clauses each one of which in turn is regarded as excluding consideration of the other or others.' Century Dictionary. * * * * *"

From the wording of the statute we are of the opinion that the legislature used the word "or" as it is ordinarily used, that is, in the disjunctive and as an alternative; that if "either" of the two situations arose the Board might issue the license; that it is not necessary therefore for both situations to be present, that is, a license from another state together with five years of practice, to enable the Board to issue a license without an examination should it care to do so. The legislature, if it intended otherwise, would undoubtedly have worded Section 9100 as is worded Section 11703, R. S. Missouri 1929, which deals with attorneys. This section reads in part as follows:

"* * * Any person becoming a resident of this state after having been admitted to the bar of any other of the United States in which he has previously resided may, in the discretion of the supreme court, be admitted to practice in this state without examination, on proof of the other qualifications required by this chapter, and on satisfactory proof that he has been duly licensed to practice law in the state from which he comes and has practiced law

regularly in such state for a period of three years."

In other words, if the Supreme Court of Missouri should find that an attorney licensed in another state meets all of the requirements of the Missouri laws for admission without examination and also has practiced law regularly in such state for a period of three years any such applicant could be admitted without examination. The conjunctive word "and" is used in the above section which requires both a license to practice in the other state as well as three years of actual practice. However, the legislature did not see fit to word Section 9100 in a similar way.

As we suggested above, Section 9100 merely says that under certain circumstances the Board "may" dispense with an examination and "may" grant certificates without an examination. In this connection you have asked the question, at least indirectly, whether the Board must issue a license if the applicant from another state meets either one of the requirements of the statute.

A similar question was asked this department in connection with licenses to practice medicine by Dr. T. S. Bourke, former President of the State Board of Health. On May 27, 1936, we addressed an opinion to him holding that the word "may" as similarly used in Section 9113, R. S. Missouri 1929, concerning reciprocity, did not absolutely require in each instance that the Board waive an examination; that the word "may" as used meant that the Board, in the exercise of its sound discretion, might refuse to license applicants on reciprocity from other states. We are attaching a copy of said opinion for the reason that Section 9100 is worded similarly to Section 9113, at least as far as the word "may" is used, and under the same reasoning there appears no mandatory duty on the Board to issue licenses to cosmetologists, hairdressers and manicurists on reciprocity from another state any more than the same duty is imposed on the Board in connection with licenses to practice medicine and surgery.

Hon. Harry F. Parker

(5)

May 1, 1940

CONCLUSION.

We are of the opinion that it is not necessary that an applicant for a license to practice cosmetology, hairdressing and manicuring on reciprocity from another state shall have been duly and regularly licensed under laws substantially equal to the Missouri laws, and also that such applicant shall have practiced the occupation for at least five years next preceding the application. Section 9100, R. S. Missouri 1929, provides that the State Board of Health may issue a license on reciprocity if the applicant complies with either of the two provisions. However, since the word "may" is used there appears no mandatory duty on the Board to issue such a license on reciprocity and without an examination and the Board may exercise its sound discretion in passing on each individual application for a license on reciprocity.

Respectfully submitted

J. F. ALLEBACH
Assistant Attorney General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney General

JFA:DA