

Opinion No. 53-5833

October 30, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Dr. R. C. Derbyshire Secretary-Treasurer New Mexico Board of Medical Examiners
227 East Palace Avenue Santa Fe, New Mexico

{*250} On October 23, you addressed an inquiry to this office concerning whether or not a resident physician can be required to be licensed by the New Mexico Board of Medical Examiners.

Section 51-501 et seq., N.M.S.A., 1941 Compilation, as amended, requires all persons practicing medicine in the State of New Mexico, with certain stated exceptions, to be licensed. Section 51-508, N.M.S.A., 1941 Compilation, which is Chapter 131, Section 1 of the 1951 Session Laws, defines the "Practice of medicine." This statute reads as follows:

"51-508. 'PRACTICE OF MEDICINE' DEFINED -- EXCEPTIONS FROM ACT. -- For the purposes of this act, the words 'practice of medicine' shall mean to open an office for such purpose or to announce to the public or any individual in any way, a desire or willingness or readiness to treat the sick or afflicted, or to investigate or to diagnose, or offer to investigate or diagnose any physical or mental ailment or disease of any person, or to suggest, recommend, prescribe or direct, for the use of any person, any drug, medicine, appliance or other agency, whether material or not material, for the cure, relief or palliation of any ailment or disease of the mind or body, or for the cure or relief of any wound, fracture or bodily injury or deformity, after having received, or, with the intent of receiving therefor, either directly or indirectly, any bonus, gift or compensation. Provided, that nothing in this act shall be construed to prohibit gratuitous services in cases of emergency or the domestic administration of {*251} family remedies, or women from practicing midwifery, and this act shall not apply to surgeons of the United States in the discharge of their official duties, and: Provided, further, that nothing in this act shall be construed to prohibit any physician who has been lawfully licensed to practice in another state from entering into a contract with a state institution to serve as a member of their medical staff exclusively, or from entering into a contract with an employer for the treatment of its employees only, providing such employer maintains in this state a hospital for the benefit of its employees, and who submits proof that he has received, in writing, a notification by the medical examining board of the state of New Mexico that he possesses the necessary character and professional qualifications; and Provided, further, that nothing in this act shall be construed so as to interfere with the practice of osteopathy, optometry, chiropractic, or dentistry, as provided for by law, nor affect or limit in any way the practice of the religious tenets of any church in the ministrations to the sick or suffering by mental or spiritual means: Provided, that this act shall not be construed to exempt any person from the operation or enforcement of the sanitary and quarantine laws of the state."

It should be noted that persons practicing gratuitously in case of emergency, for their own family, midwifery, surgeons of the United States in the discharge of their official duties, licensed physicians from other states employed as members of a state institution medical staff exclusively, and private employers employing a physician to treat their employees exclusively, provided that such employers maintain a hospital for the benefit of such employees, are, with certain reservations, exempted.

From your request, I presume that you are inquiring as to the status of a person employed as a resident physician in a public hospital as distinguished from a hospital run by a private concern and for employees only. It is my understanding that his duties fall within the definition of "practice of medicine", as defined in § 51-508, above quoted.

In the event that this resident physician is employed as a resident physician in a hospital which admits the general public, there is clearly no question but that he must be a licensed physician under the laws and by the Board of the State of New Mexico. In the event the resident physician is employed by a private concern in a hospital operated by that company, then the Board must certify as to his character and professional qualifications but no license need be issued.

Therefore, it is the opinion of this office that this Board must require the licensing of any duly employed resident physician unless that physician is in the employ of a private concern, which private concern operates a hospital solely for its employees.

We sincerely hope that this answers your inquiry.

By: Fred M. Standley

Assist. Attorney General