

Opinion No. 56-6536

October 31, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Raymond L. Young, M. D., President, New Mexico State Board of Examiners in the Basic Sciences, P. O. Box 1522, Santa Fe, New Mexico

Touching the matter of cheating by examinees in the Basic Sciences examinations given by your Board, you have asked two questions:

"1. What should the proctors do if any candidate is observed cheating during an examination?

2. Should a candidate who was observed cheating during an examination ever be given an opportunity for re-examination before this Board?"

I can find no Statute which specifically answers your questions.

However, Section 67-1-9, N.M.S.A., 1953 Compilation, among other things, provides that no certificate shall be issued by the Board unless evidence satisfactory to the Board is presented which shows the applicant to be of good moral character and that he has a comprehensive knowledge of the Basic Sciences as shown by passing the examination given by the Board. Cheating in an examination can certainly be taken as some indication of the person's moral character and, of course, if a person cheats he submits to the Board an examination upon which the Board cannot make an intelligent determination as to whether the applicant possesses the required knowledge in the Basic Sciences.

Further, Section 67-1-14, N.M.S.A., 1953 Compilation, makes it a misdemeanor to obtain a certificate by any dishonest or fraudulent means. From all of this, as well as the general power given to the Board to conduct and supervise these examinations, we conclude that the Board may formulate any reasonable policy regarding the situations which you have presented.

In connection with your first question you indicate that it has been your practice that when a person has been found cheating he is permitted to finish the examination, but that the examination papers are not graded. And, further, that you obtain a statement from the proctor that the applicant was observed cheating during the examination. This seems to be a reasonable procedure and properly within the powers of your Board.

Regarding your second question, again it is a matter upon which your Board, exercising discretion, can formulate its policy. However, I would caution against an inflexible policy prohibiting re-examination where an applicant is observed cheating. In a moment of weakness an applicant might be tempted. But this may not necessarily stamp the

person as an inveterate cheater and may not necessarily mean that he would cheat again if given an opportunity to take another examination. It seems that your policy should be such that the circumstances of each situation be taken into consideration in arriving at your decision as to whether or not such an applicant should be allowed to take another examination.

I trust the above answers your inquiries.

By Santiago E. Campos

Assistant Attorney General