

Opinion No. 57-206

August 20, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Fred M. Calkins, Jr.,
Assistant Attorney General

TO: New Mexico State Board of Examiners in the Basic Sciences, Post Office Box
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QUESTION

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May the New Mexico State Board of Examiners in the Basic Sciences refuse to issue a certificate when information reveals that the applicant had his New York license to practice medicine revoked for performing an abortion in that State?

CONCLUSION

Yes.

OPINION

ANALYSIS

Facts relating to this opinion, as we understand them, are as follows:

On March 14, 1957, an application for examination was presented to the Board by a doctor from New York City. The applicant fully completed the application form and listed two physicians who, apparently, were willing to attest to his good moral character. The application form does not contain a specific question as to whether the applicant's license to practice in another state had ever been revoked, and a routine investigation indicated that the applicant's license was in good standing and that no charge had ever been placed against him. Based on the above, the applicant was allowed to take the basic science examination and passed all phases of the test with the exception of one subject. After taking the examination on April 14, 1957, the applicant revealed to the Secretary of the New Mexico State Board of Examiners in the Basic Sciences that his license to practice medicine in New York State had been revoked on March 29, 1957, for performing an illegal abortion. His statement was verified by the New Mexico Board of Medical Examiners. The Board then notified the applicant that should he meet the requirements of the Board, the certificate would only serve to benefit him for reciprocal purposes.

We are of the opinion that the New Mexico State Board of Examiners in the Basic Science may refuse to issue a certificate under the circumstances as we understand

them to be, should they so desire. § 67-1-9, N.M.S.A., 1953 Comp., states that no certificate shall be issued by the State Board of Examiners in the Basic Sciences unless the person applying for a certificate submits evidence satisfactory to the Board that he is a person of good moral character. There is no question but that the State has the power and the right under its police power to regulate and control by means of a board and to prescribe the qualifications that each applicant who desires to practice shall possess, so long as the Board is not arbitrary, capricious or unreasonable in exercising its discretion.

Certainly the personal character of a physician is of sufficient importance to the patient and the State that the State may impose "good moral character" as a condition to the right to practice, as stated in 41 Am. Jur. 169:

"The relation of physician and patient is of such a confidential and serious nature that not only the skill but also the moral character of the physician is of great importance to the interest of the patient and the state, and a state may lawfully impose as a condition of the right to practice medicine the qualifications of honor and good moral character, . . ."

We state, by way of conclusion, that the New Mexico State Board of Examiners in the Basic Sciences, by virtue of § 67-1-9, N.M.S.A., 1953 Comp., has the legal right to refuse to issue a certificate under the present set of circumstances. Whether such action should be taken is, of course, a policy matter to be decided by the Board.