

## **Opinion No. 60-28**

February 23, 1960

**BY:** OPINION of HILTON A. DICKSON, JR., Attorney General

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

### **QUESTION**

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1. Do the application fees paid pursuant to § 67-5-11, N.M.S.A., 1953 Compilation, by applicants for licenses to practice medicine revert to the general fund at the end of the licensing year?
2. Do the annual registration fees paid by physicians pursuant to § 67-5-17 for annual continuations of licenses to practice medicine revert to the general fund at the end of the licensing year?
3. If the answers to questions 1 and 2 are "yes," in what manner is the reversion to the general fund accomplished?
4. What is the licensing year for physicians licensed to practice medicine in New Mexico?

#### **CONCLUSIONS**

1. Yes.
2. Yes.
3. See analysis.
4. The calendar year.

### **OPINION**

#### **{\*376} ANALYSIS**

We shall answer your first two questions together. Chapter 288, § 8, Laws of 1959, being a part of the General Appropriations Act for the 48th and 49th Fiscal Years, at pages 857 and 858, provides for appropriations for certain boards, including the Board of Medical Examiners. Expenditures from these appropriations are to be made in accordance with annual budgets approved by the Department of Finance and

Administration. Each board is required to pay into the General Fund 5% of the total amount appropriated for each fiscal year and budgets may not be increased except in cases of emergency by the Department of Finance and Administration. The section further provides that "cash balances remaining to the credit of any of the following boards at the end of the licensing year . . . shall be transferred to the state general fund by order of the department of finance and administration.

At page 860, two separate appropriations are listed for the Board of Medical Examiners, one being a general appropriation of \$ 4,200.00 for both fiscal years and the other being an annual registration appropriation of \$ 2,800.00 for both fiscal years.

The funds subject to the above appropriations are derived from fees collected pursuant to § § 67-5-11 and 67-5-17, N.M.S.A., 1953 Compilation. These sections read as follows:

"67-5-11. Fee for application. -- Each applicant for a license to practice medicine in New Mexico shall pay the secretary of said board a fee of fifty dollars (\$ 50.00), at the time of making his application."

"67-5-17. Application fee. -- Every licensed practitioner of medicine and surgery in this state, as now defined by section 7, chapter 44 of the Laws of 1923 [67-5-10], or as hereinafter amended or who has been licensed previously by the board of medical examiners of the state of New Mexico, hereinafter referred to as practitioners, **shall apply during {377} the month of November of each year to the board of medical examiners of the state of New Mexico, hereinafter referred to as 'the board,' for a certificate of annual registration for the ensuing year.** Resident applicants for annual registration shall pay at that time to the board an annual registration fee of two (\$ 2.00). Nonresident applicants shall pay at that time to the board an annual registration fee of five (\$ 5.00) dollars. (Emphasis supplied.)

The application shall state the applicants full name, his business and residence address, the date and number of his license to practice, and such other facts for the identification of the applicant and his license as the board deems necessary. The board shall, on or before the first day of November of each year, mail to each licensed practitioner at his last known post-office address a blank form of application for annual registration. The fact a practitioner has not received this blank from the board shall not, however, relieve him of the duty to register and pay the annual registration fee required by this act [67-5-17 to 67-5-23], nor shall such omission on the part of the board operate to exempt him from the penalties provided by this act for failure to register."

Under § 67-5-22 the moneys received as annual registration fees pursuant to § 67-5-17 are placed in a special fund for administration of § 67-5-17 through § 67-5-23 relating to the licensing of physicians. This is the fund to which the \$ 2,800.00 was appropriated for each fiscal year.

Although the licensing act does not so provide, it is obvious that the \$ 4,200.00 appropriated for each fiscal year comes from the initial application fees provided for by § 67-5-11, since there is no other provision in law to support this appropriation.

With this background in mind, we conclude that all income in the form of application fees (67-5-11) and from annual license renewal fees (67-5-17) is subject to the proviso in the appropriations act requiring a turn over of all cash balances at the end of the licensing year to the general fund. The cash balances to be so turned over are those relating to the appropriations listed, which, in the case of the Board of Medical Examiners, are derived from application fees and annual license fees. In other words, all excesses of revenues over legally permissible expenditures for the licensing year are to be turned over to the general fund at the end of each licensing year.

Your third and fourth questions must also be answered together for an answer to your question regarding the manner of the turn over is of necessity determinative of the term "licensing year." At first blush, it would appear that the language "cash balances remaining to the credit of any of the following boards at the end of the licensing year" refers to all balances on hand at that time. However, in our opinion, this is not a correct interpretation of this language as regards annual license fees. Such language must be read in conjunction with § 67-5-17 which spells out the meaning of "licensing year" for the purpose of licenses granted by the Board of Medical Examiners. Under this section, quoted above, every licensed practitioner of medicine and surgery must apply during the month of November of each year to the Board of Medical Examiners for a certificate of annual registration for the **ensuing year**. The fees are \$ 2.00 for residents and \$ 5.00 for nonresidents. The Board shall on or before the first day of November mail to each licensed practitioner an application for annual registration. However, if such a blank is not mailed, the practitioner is not relieved of the duty to register and pay the annual registration fee.

You have informed us that the {\*378} license actually issued is for a calendar year, beginning with January 1 and ending with December 31. The law is clear that the word "year" in any statute is construed to mean calendar year unless the context otherwise requires. In our opinion, even though applications are made in November, the licenses are to be issued for calendar years since under the statute the application is made "for the ensuing year." Your practice of issuing licenses for a calendar year confirms our belief. Therefore, we must conclude that the licensing year in connection with licenses issued by the Board of Medical Examiners is the calendar year.

This being so, annual licensing fees for the licensing year of January 1, 1960 through December 31, 1960, were received during the latter two months of 1959 and those for the forthcoming licensing year of January 1, 1961 through December 31, 1961, will be received during the latter part of 1960.

It would be absurd to hold that these moneys are to be taken away from the Board almost as soon as they are collected. Therefore, we conclude in regard to annual license fees that the cash balances which are to revert are only those which have not

been expended in accordance with the annual registration appropriation and approved budgets pertaining thereto as relate to that licensing year. Thus, if \$ 5,000.00 in annual registration fees were collected in late 1958 for the 1959 licensing year and \$ 3,000.00 of this was legally expended, \$ 2,000.00 would revert to the general fund. The sums collected in late 1959 for the 1960 licensing year will not revert, if a surplus remains, until the end of 1960.

A different situation exists in connection with the initial application fee of \$ 50.00 paid pursuant to § 67-5-11. This is a fee paid by applicants for initial registration and does not pertain to any particular year, license or renewal thereof. There is no licensing year in connection with this fee. Therefore, all cash balances from this source remaining at the end of the calendar year, being the licensing year, must be turned over to the general fund at the end of each calendar year.

By: Philip R. Ashby

Assistant Attorney General