

Opinion No. 65-11

January 25, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Wayne C. Wolf, Assistant Attorney General

TO: Clay Buchanan, Director, New Mexico Legislative Council State Capitol Building, Santa Fe, New Mexico

QUESTION

QUESTIONS

1. Under the existing statutes for admission to practice medicine in New Mexico, what are the requirements for a person to qualify for a license by endorsement?
2. If a person meets the qualifications for licensing by endorsement without examination, does the New Mexico Board of Medical Examiners have any discretion to refuse the applicant a license to practice medicine in the State of New Mexico?
3. What is the function of the New Mexico Board of Medical Examiners in regard to the interview that is required before a license can be granted by reciprocity or endorsement?

CONCLUSIONS

1. See Analysis.
2. No.
3. See Analysis.

OPINION

{*21} ANALYSIS

The basic requirements for licensing by endorsement are found in Section 67-5-5, N.M.S.A., 1953 Compilation. This section insofar as applicable to your questions reads:

". . . : Provided, that such board may grant licenses without examination and by endorsement to those applicants who have been regular licensed physicians in other states and territories, having qualifications and requirements equivalent to those required in New Mexico when properly endorsed by the officers of such examining board as may have jurisdiction in the state or territory in which the applicant was examined, and upon a blank furnished by the board of medical examiners of the state of

New Mexico, known as the 'application for license through endorsement' blank, and shall not have failed in examination by this board, . . .

Every applicant for a medical license by reciprocity, application for a license through endorsement, or reciprocity extended to the certificate of examination issued by the National Board of Medical Examiners of the United States of America shall present himself to the board in person for an interview before being granted a license."

The quoted language contains all but one of the requirements for licensing by endorsement. The applicant must be a regularly licensed physician in another state or territory having qualifications and requirements equivalent to those necessary for licensing in New Mexico. He shall not have failed any examination given by the New Mexico Board and his application must be properly endorsed by the examining board of the state or territory in which he was examined. The additional requirement applies to all applicants for a license whether they are seeking the license by examination, reciprocity or endorsement. That requirement is found in Section 67-5-9, N.M.S.A., 1953 Compilation. This section provides that the {^{*}22} board "shall refuse to license any person guilty of immoral, dishonorable or unprofessional conduct. . . ."

Your second question asks whether Section 67-5-5, supra, is mandatory or directory. These two classifications, however, are merely descriptive of the effect that it has been determined should be given to a statute. **Sutherland Statutory Construction**, 3rd Ed. § 5801. In determining the mandatory or directory nature of a statute, the question is essentially one of legislative intent. **Reese v. Dempsey**, 48 N.M. 417, 152 P. 2d 157; Sutherland Op. Cit. supra, § 5803. Although mandatory and directory verbs may aid in determining the legislative intent, their literal meaning will not be adopted if it conflicts with the legislative intent. **In re Vigil's Estate**, 38 N.M. 383, 34 P. 2d 667, 93 A.L.R. 1506; **Lorenzino v. James**, 18 N.M. 240, 135 Pac. 1172; **Bd. of Sup'rs, Rock Island Co. v. United States**, 4 Wall. 435, 18 L. Ed. 419. It is obvious from the statute itself that the New Mexico Legislature intended to provide a means for licensing out of state practitioners without requiring them to submit to an examination in this state. It is also well established that the legislative purpose in providing medical practice and licensing laws is to safeguard the public health. **People v. Thompson**, 325 Ill. App. 95, 59 N.E. 2d 494.

We are informed by the State Law Librarian that the Board of Medical Examiners has never filed any rules or regulations with the New Mexico Supreme Court Library. We, therefore, conclude that absent properly issued and reasonable regulations, a person is entitled to a license if he meets all the qualifications established by the legislature. This is the precise holding of **People v. Thompson**, supra. In that case the Illinois Medical Board refused to license an applicant who met all of the statutory qualifications for a license by reciprocity. The board insisted that he provide for their benefit, copies of his transcript at medical school. The board in Illinois had never formally adopted a rule or regulation requiring the furnishing of a transcript but they had always insisted upon the same. The court, in that case, held that the applicant was entitled to a license since he

met all the qualifications imposed by the statute. This was true even though the board's duty to issue licenses by reciprocity was couched in permissive language.

Our conclusion is also supported by the general rule with respect to statutes conferring power or authority upon public officers or boards. If a statute provides for the exercise of power by a public official and private rights or the public interest would require the doing of such acts then the statute is mandatory even though the power is expressed in permissive terms. See Sutherland Op. Cit., supra, § 5808; **Lorenzino v. James**, 18 N.M. 240 (1913).

In the **Lorenzino** case, supra, the New Mexico court expressed itself on this subject by quoting the Illinois court decision in the case of **People v. Commissioner of Highways**, 130 Ill. 182, 22 N.E. 596.

"The word 'may' in a statute will be construed to mean 'shall' whenever the rights of the public or third persons depend upon the exercise of the power or the performance of the duty to which it refers. And such is its meaning in all cases where the public interests and rights are concerned or a public duty is imposed upon public officers, and the public or third persons have a claim De Jure that the power shall be exercised."

It is quite true, however, that the board has the power and is required to determine whether or not a particular applicant meets the statutory qualifications. The duty of the board to determine the applicant's qualifications merely requires that the board satisfy itself as to the existence of a particular {23} state of facts which would support its determination.

Your third question asks for a determination of the function of the board with respect to the interviews which is required by statute for those applicants who are seeking a license without examination. It is obvious that the interview would be an aid to the board in determining whether or not the applicant meets the statutory qualification for the issuance of a license by endorsement. It provides the opportunity for a detailed discussion and analysis of any particular problem concerning the applicant's qualifications. The interview, therefore, is a helpful aid in all instances in determining whether or not an applicant has met the New Mexico qualifications for licensing by endorsement.

We have not attempted to mention the requirements of the Basic Sciences Act, (Laws of 1941 Chapter 189, as amended) since your questions concern the Board of Medical Examiners. Of course, in any applicable situation the requirements of the Basic Sciences Act must also be satisfied.