

Opinion No. 75-40

July 29, 1975

BY: OPINION OF TONEY ANAYA, Attorney General

TO: Honorable David Salman State Representative Buena Vista, New Mexico 87112

QUESTIONS

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1. Can physical therapist assistants, graduated from an approved two year program, be licensed as physical therapists?
2. Can the Physical Therapist Licensing Board require continuing education as a prerequisite for license renewal?

CONCLUSIONS

1. Yes, provided they meet the requirements of Sections 67-10-10 and 67-10-11, NMSA, 1953 Comp.
2. No.

OPINION

{*115} ANALYSIS

1. Sections 67-10-10 and 67-10-11 unequivocally state the minimum requirements for licensure as a physical therapist. They provide:

"67-10-10. Qualifications for licensing and registration. -- To be eligible for licensing and registration under this act [67-10-1 to 67-10-19] a person shall be of good moral character, have reached the age of majority, be a citizen of the United States, or be able to present satisfactory evidence of having applied for citizenship in the United States, and a graduate of a school of physical therapy in good standing. A 'school of physical therapy in good standing' for the purposes of this act means a school having standards at least as high as those required for approval by the council on hospitals and medical education of the American Medical Association."

"67-10-11. Examinations -- Minimum requirements. -- The state physical therapists' licensing board shall by examination or by such other means as it shall deem advisable determine whether each person seeking to be licensed and registered under this act [67-10-1 to 67-10-19] possesses the necessary knowledge and skill to practice physical therapy as defined herein. The minimum knowledge and skill required of applicants to

be eligible for licensing and to be permitted to practice in this state shall be not less than the minimum knowledge and skill required of persons for membership in either the American Physical Therapy Association or the American Registry of Physical Therapists."

Any applicant for a license -- including a person who has worked as an assistant and who has graduated from an approved two year school -- must meet these requirements. The statutes governing physical therapists do not refer to assistants, and they do not make any special provisions for their licensure. Nor is there any provision which either expressly or impliedly grants to the physical therapist's licensing board the power to waive or alter requirements for licensure. Since administrative agencies possess only those powers expressly conferred {*116} by statute and those necessarily implied therefrom, the physical therapist's licensing board cannot make any special provisions for the licensure of physical therapist assistants as physical therapists. See **Wimberly v. New Mexico State Police Board**, 83 N.M. 757, 497 P.2d 968 (1972).

2. The same principle of administrative law governs the answer to your second question. The statutes impose only one requirement for license renewal -- the payment of a five dollar fee. Section 67-10-9, NMSA, 1953. No statute expressly or impliedly authorizes the board to impose additional requirements; therefore, the board cannot impose continuing education requirements as a condition for license renewal.

By: Thomas Patrick Whelan, Jr.

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