

## Opinion No. 39-3048

March 8, 1939

**BY:** FILO M. SEDILLO, Attorney General

**TO:** Dr. Le Grand Ward, Secretary-Treasurer, New Mexico Board of Medical Examiners, Santa Fe, New Mexico.

{\*23} Your letter of March 3 and enclosure of the Carlsbad paper containing advertising matter by a Carlsbad physician and request for an opinion as to whether or not said advertisement could be considered unprofessional conduct and subject the said physician to have his license revoked by the State Board of Medical Examiners received.

Chapter 110, Section 107 of the 1929 Compilation, New Mexico Statutes, Annotated, authorizes the State Board of Medical Examiners upon said proof to annul the license issued by said board where the holder of said certificate of license has been guilty of immoral, dishonorable and unprofessional conduct. As to what is unprofessional conduct the question has been before the courts for interpretation many times.

A Washington statute providing for revocation of physicians' licenses does not prohibit mere unethical conduct, but if he advertised his business and said advertising had a tendency to deceive the public, and be harmful to public morals or safety then defendant was guilty of unprofessional conduct. *State Board of Medical Examiners v. Jordon*, 163 P. 925, 95 Wash. 700.

Truthful advertising, whether by newspaper or radio by licensed dentist, is not prohibited. *Barron v. Board of Dental Examiners of California*, 293 P. 144.

False advertisement by itinerant doctor was held unprofessional and dishonorable conduct, and license was revoked. 78 Colo. 153.

The provisions of the statute, which authorizes the revocation of the certificate of physician by the board of medical examiners for unprofessional conduct, consisting of medical advertising in which grossly improbable statements are made, but which fails to define "grossly improbable statements" in any way, but leaves their definitions in each particular case to the opinion of the then board of medical examiners, is too indefinite and uncertain to be capable of enforcement. *Hewitt v. Board of Medical Examiners*, 84 P. 39.

From the reading of the above cases as to what is unprofessional conduct, we note that the statutes in each case give a definition. In New Mexico our Legislature does not define unprofessional conduct neither does it prohibit advertising by physicians, but I am satisfied that our statute does not go far enough so as to give the power to the Board of Medical Examiners to revoke the license of a physician unless said advertising should

be false, immoral and against the public welfare of our state. In the advertisement submitted I find none of these objections present, and for that reason it is my opinion that the unprofessional conduct in this case is not sufficient to justify a revocation of the license.

By: GEORGE LOUGEE,

Asst. Atty. Gen.