

PHYSICIANS: STATE BOARD OF HEALTH: May institute proceedings to revoke license on complaint of any citizen.

May institute proceedings upon information without complaint having been filed.

January 13, 1936

E. T. McGaugh, M. D.  
State Health Commissioner  
State Board of Health  
Jefferson City, Missouri



Dear Sir:

This will acknowledge receipt of your letter requesting an opinion from this department, which reads as follows:

"Is it legally right for the Board or any member of the Board to file charges against offending licensed practitioners of medicine with a view to revoking a license or must this be done by some citizen not a member of the Board?"

Section 9120, Revised Statutes Missouri 1929, which authorizes the State Board of Health to revoke licenses to practice medicine, reads, in part, as follows:

"The board may refuse to license individuals of bad moral character, or persons guilty of unprofessional or dishonorable conduct, and they may revoke licenses, or other rights to practice, however derived, for like causes, and in cases where the license has been granted upon false and fraudulent statements, after giving the accused an opportunity to be heard in his defense before the board as hereinafter provided. Habitual drunkanness, drug habit or excessive use of narcotics, or

producing criminal abortion, or soliciting patronage by agents, shall be deemed unprofessional and dishonorable conduct within the meaning of this section. At least twenty days prior to the date set for any such hearing before the board for the revocation of such license, the secretary of the board shall cause written notice to be personally served upon the defendant in the manner prescribed for the serving of original writs in civil actions. Said notice shall contain an exact statement of the charges and the date and place set for the hearing before the board.

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The above section does not require that a complaint or charge be filed against a licensee to practice medicine with the State Board of Health, before a proceeding is instituted to revoke such licensee's license, but only requires that the secretary of the board shall cause written notice to be personally served upon the defendant in the manner prescribed for the serving of original writs in civil actions, and that said notice shall contain an exact statement of the charges and the date and place set for the hearing before the board.

In the case of State ex rel. Hurwitz v. North, et al. 264 S. W. 678, the right of the State Board of Health to institute proceedings to revoke a license on the complaint of the prosecuting attorney was questioned. At l. c. page 680, the court said:

"The first attack made by relator upon the record of the state board of health is that the complaint purports to be filed by the prosecuting attorney, and that there is no authority in law for that officer to file such. The statute does not say by whom such complaints may be made. It contains no limitations in this regard.

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"So in the case at bar. It may be true that the statute fixed the duties of a prosecuting attorney, and they do not cover a complaint of this kind, in his official capacity. The complaint in this case does not appear to be upon his oath of office as prosecuting attorney, except by the language following the name, which can be considered either as surplusage or as a mere description of the person. We feel that the complaint and charges as made were (so far as this contention is concerned) sufficient to properly invoke the jurisdiction of the state board of health. The statute is certainly broad enough to permit any citizen to prefer the charges, and a person is not deprived of citizenship by occupying the office of prosecuting attorney."

In the case of Horton v. Clark 293 S. W. 362, a complaint filed by the State Board of Health against a licensee to practice medicine was attacked on the ground that it was not verified by the oath of the complainant. The Supreme Court, en banc, held that a proceeding to revoke a license to practice medicine need not be instituted by the filing of a verified complaint or by the filing of any complaint whatever. The court further held that the Board of Health may act upon any information from whatever source and however communicated which it may deem trustworthy, and that it is only necessary that the written notice required by statute "contain an exact statement of the charges. The court, at l. c. page 363, said:

"The first point made against the complaint is that it was not verified by the oath of the complainant. The contention is based upon precedents to the effect that, regardless of statutory requirements, proceedings for the disbarment of an

attorney at law must be instituted by verified information. Those precedents are not binding or even persuasive in a case such as this. Disbarment proceedings are not governed exclusively by statute. Independent of any statute on the subject, courts have the inherent power to disbar attorneys; and a statute, where there is one, is not regarded as restrictive, but merely as declaratory of the common law so far as it goes. *State v. Gebhardt*, 87 Mo. App. 542, 548. The power to revoke the license of one who is thereby authorized to practice medicine and surgery, on the other hand, does not exist apart from statute. In this state the statute (section 7336, R. S. 1919) is not only the sole source of the power to revoke, but it prescribes and regulates exclusively the procedure to be followed in the exercise of the power. Looking, then, to the statute, we find no requirement that a proceeding to revoke a license to practice medicine shall be instituted by the filing of a verified complaint, or by the filing of any complaint or information whatever. Evidently it contemplates that the state board of health may act upon any information, from whatever source and however communicated, which it may deem trustworthy. It is only necessary that the written notice provided for 'contain an exact statement of the charges.' "

#### CONCLUSION

In view of the above, it is the opinion of this

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department that the State Board of Health may institute a proceeding to revoke a license to practice medicine on the complaint of any citizen. It is our further opinion, however, that the State Board of Health may institute proceedings to revoke a license upon any information they may have obtained, regardless of from whom received or how communicated, and it is not a prerequisite that a complaint has been filed with them. It is sufficient if the licensee against whom the charges are made is served with the written notice provided for in Section 9120, supra, and that such notice contain an exact statement of the charges against such licensee.

Yours very truly,

J. E. TAYLOR  
Assistant Attorney General

APPROVED:

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JOHN W. HOFFMAN, Jr.  
(Acting) Attorney General

JET:LC