

BOARD OF HEALTH

PHYSICIANS AND SURGEONS: Persons licensed in foreign states are not permitted to come within this state and conduct examinations without first having applied for and received license to practice medicine and surgery within this state.

January 14, 1937

Opinion No. 34

Dr. H. S. Gove
State Health Commissioner
Medical Licensure Department
Jefferson City, Missouri



Dear Dr. Gove:

This will acknowledge receipt of your request for an opinion, which reads as follows:

"Will you kindly give me an opinion as to whether or not a physician who is licensed in another state can come into the State of Missouri and examine a group of men for the purposes of Occupational Diseases Insurance coverage without a medical license of the State of Missouri."

The statute governing your request for an opinion is Section 9113 of R. S. Mo. 1929. It provides in part as follows:

"All persons desiring to practice medicine or surgery in this state * * * shall appear before the State Board of Health, at such time and place as the Board may direct and there shall be examined as to their fitness to engage in such practice."

The question naturally arises as to whether a physician licensed in another state can come into the State of Missouri and examine a group of men and escape the necessity of appear-

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ing before the Board of Health and there be examined as to his fitness to examine this group of men. It would seem that no licensed physician of another state could do so without the necessity of appearing before the Board to show his particular qualifications to make such examination, as was said in the case of State vs. Davis, 194 Mo. L. C. 497. The court in discussing the provisions relating to medicine and surgery said:

"The practice of medicine as contemplated by the provisions of the statute covering that subject, may consist only of the examination of a patient, * * *".

It is further provided in Section 9113 that all persons, before appearing before the Board, shall make an application in writing showing their necessary qualifications. In the same section, it is further provided:

"And it is further provided that the said board of health may under the regulations established by the board admit without examination legally qualified practitioners of medicine who hold certificates to practice medicine in any state or territory of the United States or the District of Columbia with equal educational requirements to the state of Missouri and that extend like privileges to legally qualified practitioners from this state upon the applicant paying a fee of fifty dollars (\$50.00)".

In the case of State ex rel Walker vs. State Board of Health, 61 S. W. (2d) 1. c. 927, the court had the above quoted part of the section before it for consideration and in discussing the proviso said:

" * * * the state board of health 'may under the regulations established by the board admit without examination' qualified practitioners

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holding certificates to practice medicine in other states 'that extend like privileges to legally qualified practitioners from this state. * * * * . The second proviso of section 9113, Mo. St. Ann. 1929, is a legislative declaration of comity between Missouri and sister states. To this state of comity there is applicable the comment of this court on another statute (Newlin v. St. Louis & San Francisco Ry. Co., 222 Mo. 275, 121 S. W. 125, loc. cit. 130): 'In this connection we observe: Our statutes * * * opening the doors of our courts to causes of action accruing under laws of our sister states, are legislative declarations of comity. Comity, in a legal sense, is complaisance, courtesy, the granting of a privilege not of right, but of good will. Black's L. Dict. tit. 'Comity'. Now, in reason, courtesy in that behalf has its useful limitations. It may not run riot; it goes circumspectly. It must be courtesy in fact as well as name.' The command of our statute (section 9113, Mo. St. Ann. 1929) is that all persons desiring to practice medicine in this state shall be examined as to their fitness by the state board of health. By way of exception to this command the provisos quoted permit the board to admit certain classes of applicants without examination. Persons so admitted are granted a privilege, not of right but of good will, and in the exercise of the board's sound discretion."

Your attention is directed to Section 9111, R. S. Mo. 1929, relating to practitioners being duly registered:

"It shall be unlawful for any person not now a registered physician within the meaning of the law to practice

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medicine or surgery in any of its departments * * *, in the State of Missouri, * * *".

Your attention is further directed to Section 9118 of R. S. Mo. 1929, relating to the practice of medicine without a license. Said section reads in part as follows:

"Any person practicing medicine or surgery in this state * * * without a license from the State Board of Health * * * shall be deemed guilty of a misdemeanor."

In reaching our conclusion, we are not unmindful of Section 9122, R. S. Mo. 1929, relating to when a licensed practitioner of medicine or surgery in a border state may attend the sick within this state when the practitioner does not maintain an office within this state. The pertinent part of said section reads as follows:

" * * * any licensed practitioner of medicine and surgery in a border state attending the sick in this state provided he does not maintain an office or appointed place to meet patients or receive calls within the limits of this state, and provided, that such practitioner comply with the statutes of Missouri and the rules and regulations of the Missouri state board of health relating to the reports of births, deaths and contagious diseases, * * *".

You will note that the above quoted section of the statute uses the words "attending the sick in this state" and in light of the cases herein cited, this necessarily contemplates that a person is ill and might require the administration of drugs or surgery, whereas from your request for an opinion, the physician therein mentioned, only makes an examination for the purpose of determining ones physical fitness as an insurable risk.

It can not be said that a physician licensed in a foreign state can come into this state and make an examination of persons to ascertain whether or not occupational diseases exist by virtue

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to ascertain whether or not occupational diseases exist by virtue of Section 9122, supra.

It is evident that the Legislature intended to throw the cloak of guardianship around the citizens of this state when enacting the above sections of the statutes to prevent persons not sufficiently skilled in the practice of medicine to attend unto the afflicted. In the case of State vs. Davis, supra, at page 499, the court said:

"The prime object of this law upon the subject of the practice of medicine is the protection of the people from the impositions * * * by persons who are not sufficiently skilled in the profession * * *".

In the case of State vs. Smith, 233 Mo. 1. c. 267, the court said:

"Laws enacted for the purpose of regulating or throwing restrictions around a trade, calling or occupation, in the interests of the public health and morals are everywhere upheld and sustained. Such laws are within the police power of the State, and are universally sustained where enacted in the interests of the public welfare. The question presented in cases where the validity of such laws is called in question is no longer the power or authority of the Legislature to enact them, but whether the occupation, calling or business sought to be regulated is one involving the public health and interests. A person engaged in such an occupation is not alone interested therein. The public served by him is also interested. He is interested to the extent that it provides and furnishes him with employment and a means of livelihood. The public is interested in his competency and qualifications, and it is eminently proper that there be thrown around the calling protection from intrusion by incompetents and others inimical to the public good".

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CONCLUSION

It is the opinion of this department that a physician, who is a licensed practitioner in another state, cannot come into the State of Missouri and examine a group of men for the purpose of determining whether or not they have occupational diseases, without making application for a license and becoming registered.

We further rule that a physician licensed in a foreign state coming into this state for the purpose of examining men for occupational diseases only determines their physical fitness for insurance. And, in so doing must comply with the provisions of the Missouri law relating to the practice of medicine and surgery.

Respectfully submitted,

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APPROVED:

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