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MEDICAL BOARD, STATE—IN ITS DISCRETION, MAY OR MAY NOT, ADOPT STANDARDS AND GRADING OF COUNCIL ON MEDICAL EDUCATION AND HOSPITALS OF AMERICAN MEDICAL ASSOCIATION — PURPOSE, TO DETERMINE WHETHER SCHOOL IS IN “GOOD STANDING” AT TIME OF GRADUATION OF APPLICANT FOR LICENSE TO PRACTICE MEDICINE IN OHIO.

SYLLABUS:

In determining whether a medical school from which an applicant for license graduated was in “good standing” at the time of the applicant's graduation, the State Medical Board in its discretion may or may not adopt the standards and grading of the Council on Medical Education and Hospitals of the American Medical Association.

Columbus, Ohio, April 4, 1946

Hon. Frank J. Lausche, Governor of Ohio
Columbus, Ohio

Dear Governor:

I am in receipt of your request for my opinion which reads as follows:

“I am writing to you with a view of getting an opinion in regard to the state laws dealing with the right of graduates of medical colleges to practice medicine in our state.

The question which I present to you involves two graduates of the Chicago Medical School. This school has not been approved by the Council on Medical Education and Hospitals. The two men whom I have in mind are Dr. Earl Berger and Dr. John Jacobs, each of whom graduated from the Chicago Medical School and later were admitted to practice medicine in the State of Illinois. Each subsequently became a member of the U. S. Army. They are both veterans.

They have been told by the Medical Board that, under the specific provisions of the Ohio law, neither can be admitted to practice unless the law is changed. It is the position of the Medical Board that it can admit to the practice of medicine in Ohio only those applicants who are duly licensed in another state and who have been graduated from a medical school approved by the Council on Medical Education and Hospitals. Specifically,

1. Does our law require that an applicant must be a graduate from a school approved by the Council on Medical Education and Hospitals?
2. Is there a discretionary power in the Board to determine what school of medicine shall be considered by it as qualified to teach medicine?
3. Does the Board, under the present law, by regulation or rule, have the discretionary power to give consideration to a school not approved by the Council on Medical Education when the graduate of that school has rendered lengthy medical service in the military forces of our nation?"

Since the Chicago Medical School is an institution organized for the purpose of teaching medicine and surgery generally, as distinguished from the limited branches thereof, and the two individuals involved were graduated from that school with the degree of Doctor of Medicine, it will only be necessary to consider those sections of the law dealing with medicine and surgery. Section 1270, General Code, deals with the question of the qualifications necessary to gain entrance to the examination and, in so far as applicable to the questions you present, provides :

"The applicant must also produce a diploma from a medical institution in the United States *in good standing as defined by the board at the time the diploma was issued* or produce a diploma from a school or college of osteopathy in the United States in good standing at the time the diploma was issued as defined by a committee consisting of the director of education of the state of Ohio, a member of the state medical board who holds the degree of doctor of medicine and a member of the state medical board who holds the degree of doctor of osteopathy, or a diploma or license approved by the board which conferred the full right to practice all branches of medicine or surgery in a foreign country."
(Emphasis added.)

The above quoted portion of the section applies when an applicant is seeking to take an original examination in this state. Where the applicant has already been licensed to practice medicine or surgery in another state and seeks to be admitted by endorsement in this state, then Section 1282, General Code, is applicable. This section provides in part :

"When a physician or surgeon licensed by the licensing department of another state, a territory or the District of Columbia, or a diplomat of the national board of medical examiners or the

national board of examiners for osteopathic physicians and surgeons wishes to remove to this state to practice his profession, the state medical board may, in its discretion, issue to him a certificate to practice medicine or surgery, osteopathic medicine and surgery, or osteopathy in Ohio without requiring the applicant to submit to examination, *provided he meets the requirements for entrance as set forth in Section 1270 * * *.*" (Emphasis added.)

The two sections quoted supra provide the only statutory requirements necessary to admission to practice medicine and surgery in this state in the case that you present. The State Medical Board has not adopted any rules or regulations in connection with the admission of applicants under either of these sections; therefore we need only look to the statutes involved.

Before proceeding to answer your questions, I believe it will be of interest to review briefly the background giving rise to this situation.

The Council on Medical Education and Hospitals of the American Medical Association is a permanent Committee of the American Medical Association whose duty it is to supervise medical education, investigate or survey medical schools and assemble information of value to the various licensing boards of the United States. This Committee employs experts who visit the various medical institutions and, on the basis of their examination, recommend that the school either be approved or not approved. The recommendation of this Committee is the yardstick by which the various state boards of licensure gauge the essential information to guide them in the recognition of medical schools. The various state boards may or may not accept the recommendation of the Council.

I am advised that for many years past the Council on Medical Education and Hospitals has approved all medical schools in the United States with the exception of three i.e., Boston College of Physicians and Surgeons, Middlesex University School of Medicine of Massachusetts and the Chicago Medical School. Of these three, the Chicago Medical School is the only school now in operation. Middlesex School has ceased to operate and Boston College is now in the process of discontinuing operations. There are presently sixty-nine approved schools.

Until 1928, the Council on Medical Education and Hospitals classified medical institutions then existing as either Grade A, B or C. Grade A schools were those which were entirely acceptable; Grade B schools

were those to which approval was given, but recommendation was made for improvement; and Grade C schools were those which were not approved. In this latter class is the Chicago Medical School. Since 1928 the Council each year publishes a list of acceptable medical schools. The classification of A, B and C is discontinued and only acceptable schools are mentioned.

At no time has the State Medical Board of Ohio approved the Chicago Medical School. The Board has considered the report of the Council on Medical Education and Hospitals and other information at hand and has consistently refused approval. On February 13, 1940, in response to a request from the authorities of the school, an inspection of the institution was made by Dr. J. H. J. Upham and Dr. H. M. Platter, respectively member and secretary of the Ohio State Medical Board. Dr. Upham is a former dean of the College of Medicine of Ohio State University; has been a practicing physician for many years; has been a member of the Ohio State Medical Board since 1912; and is a former president of the American Medical Association. Dr. Platter has been secretary of the Medical Board since 1917; is a former member of the faculty of Ohio State University; is a former president of the Ohio State Medical Association; and at present is also a member of the National Board of Medical Examiners. After their inspection, Dr. Upham and Dr. Platter submitted a report to the Medical Board at its next regular meeting. It was their recommendation that the school not be placed on the approved list of the Ohio State Medical Board, and this recommendation was adopted by the Board as is evidenced by the minutes of the Board Meeting of April 1, 1940, which read as follows:

“The application of John Jacob, a graduate of The Chicago Medical School, for permission to write the examination was denied, upon motion of Dr. Waggoner seconded by Dr. Hunter, for the reason that the school was not upon our approved list. Dr. Upham made a report of his inspection of this institution on February 13. He stated that the school which had never been approved, was better conducted than formerly but still needed considerable improvement to gain recognition. Dr. Upham’s report was accepted as the opinion of the Board.”

The most universal, as well as the most important, of all statutory regulations of the practice of medicine is that which requires every person who desires to practice the healing art first to obtain a license so to do,

issued by the state, after a prescribed showing by the applicant of his qualifications to engage in such practice. The power of a state, under its police power, to regulate and control the practice of medicine, either generally or in any of its limited branches, includes the power to prescribe the qualifications which everyone who desires to engage in such practice must possess. The legislature may validly empower a board of examiners to ascertain and determine whether applicants for license to practice possess the statutory qualifications. *Graves v. Minnesota*, 272 U. S., 425, 71 L. Ed., 331, 47 S. Ct., 122; *State, ex rel. Grant v. Rosenkrans*, 30 R. I., 374, 75 Atl., 491, 19 Ann. Cas., 824, affirmed without opinion in 225 U. S., 698, 56 L. Ed., 1263, 32 S. Ct., 840.

It is generally specified that the diploma of an applicant for a license shall have been granted by a reputable college in good standing, or by one which has been approved as to its standards, terms, and courses either by the examining board or by members of the profession acting through some designated professional society or association. *Graves v. Minnesota*, supra; *Ex parte Gerino*, 143 Calif., 412, 77 Pac., 166, 66 L. R. A., 249; *State v. Bonham*, 93 Wash., 489, 161 Pac., 377, L. R. A., 1917D, 996; *Annotation* 79 L. Ed., 536.

A statute which authorizes a state board to grant a license to practice medicine on presentation of a diploma which satisfies certain conditions, empowers it to determine whether a diploma satisfies such conditions. *Iowa Eclectic Medical College Association v. Schroder*, 87 Ia., 659, 55 N. W., 24, 20 L. R. A., 355. A statutory provision which authorizes the examining board to determine whether the professional college which granted a diploma to an applicant is of the statutory standard of reputation does not invalidly delegate legislative functions to such board. *Graves v. Minnesota*, supra; *Dent v. West Virginia*, 129 U. S., 114, 32 L. Ed., 623, 9 S. Ct., 231; *Ex parte Whitley*, 144 Calif., 167, 77 Pac., 879; *Re Thompson*, 36 Wash., 377, 78 Pac., 899; *Rothseid v. State Board of Medical Examiners*, 132 N. J. L., 38, 38 Atl. (2d), 444. The *Rothseid* case was decided by the Supreme Court of New Jersey on July 18, 1944. Since the opinion in that case is short and so pertinent to the questions you present, it is set out herein at length, as reported at page 444 of the 38 Atl. (2d) report:

“Albert Seymour Rothseid seeks a writ of mandamus to compel the State Board of Medical Examiners, respondent, to

license him to practise medicine and surgery in this state by virtue of his license to so practice in the state of Massachusetts or in the alternative to admit him for examination for such license by said board. Relator is a graduate of Middlesex University, School of Medicine of Massachusetts, and holds its degree of Doctor of Medicine. He was admitted to examination in Massachusetts for a license to practise medicine and surgery; he met the requirements, was duly licensed and is practising his profession in that state as a resident physician in the Lawrence General Hospital at Lawrence, Massachusetts. His application for a license from the respondent to practise in this state or to be admitted to an examination for such license has been denied. The reason for such action by respondent is because relator has not met the legal requirement by graduation from a medical school approved by it. *R. S. 45:9-5.1 et seq., N. J. S. A., provides that an applicant for a license to practise medicine and surgery shall have received a diploma from a professional school which in the opinion of the board 'was in good standing at the time of the issuance of the diploma.'* *R. S. 45:9-13, N. J. S. A., provides for the licensing without examination of an applicant who has been licensed to practise in another state provided that he has met all other requirements 'demanded in the other sections of this article relating to applicants for admission by examination.'*

The question to be determined is whether the respondent is justified in classifying Middlesex University School of Medicine as an institution which was not in good standing. It appears that it bases its conclusion in the grading and standing of medical schools on the standard adopted by the Committee of Education of the American Medical Association and makes public the names of the schools which it approves. It is argued by the relator that the action of the respondent in accepting the grading of medical schools by the American Medical Association is without using its own judgment or discretion but constitutes an unlawful delegation of its duty and power. We think not. It is entirely within its discretion, it seems to us, to adopt the standard and grading of an organization of which it has knowledge and confidence. We think it acted within its sound discretion within the meaning of the statute *supra* and was not actuated by arbitrariness or capriciousness. Compare *Salowitz v. Michigan State Board*, 285 Mich. 214, 280 N. W. 737; *Rosenthal v. State Bar Examining Committee*, 116 Conn. 409, 165 A. 211, 87 A. L. R. 991.

We conclude that the relator has not shown any violation of his rights which entitles him to a writ. The application is denied, but without costs." (Emphasis added.)

It will be noted that the Rothseid case concerned a graduate of the Middlesex School of Medicine of Massachusetts, which school is one of

the three which has never been approved by the Ohio Board of Medical Examiners. It will be further noted that the statutes involved in that case are substantially the same as Sections 1270 and 1282, General Code.

Manifestly the State Medical Board is without authority to discriminate between persons who are graduates of the same school at a time when such school was not approved by the Board; in other words, authority of the Board to approve or disapprove does not run to the applicant or the person but rather to the school. Hence, if a school were disapproved for any particular year or years, all graduates of such school in such year or years would be denied the right to practice medicine in Ohio.

In view of the foregoing, it is my conclusion that your questions should be specifically answered as follows:

1. The statutes of Ohio do not require that an applicant to practice medicine in this state be a graduate of a school approved by the Council on Medical Education and Hospitals of the American Medical Association.

2. There is a discretionary power in the Ohio Board of Medical Examiners to determine whether a medical school from which an applicant for a license graduated was in "good standing" at the time the diploma was issued.

3. The State Board of Medical Examiners under the present law has the discretionary power to determine whether a medical school is in "good standing," regardless of whether such school has been approved or disapproved by the Council on Medical Education and Hospitals of the American Medical Association.

Respectfully,

HUGH S. JENKINS,
Attorney General