

(Alt. E-1) of the Form of Proposal dated December 14, 1933. Said contract calls for an expenditure of nine thousand two hundred and thirty dollars (\$9,230.00).

You have also submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. Evidence is presented showing that the Controlling Board has released moneys for this project, in accordance with sections 1 and 2 of House Bill No. 652 of the 90th General Assembly, regular session. In addition, you have submitted a contract bond upon which the Indemnity Insurance Company of North America appears as surety, sufficient to cover the amount of the contract.

You have submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this date noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

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DENTIST—EXAMINATION FOR LICENSE TO PRACTICE DENTISTRY—  
RE-EXAMINATION PERMITTED IN ALL SUBJECTS SPECIFIED BY  
STATUTE—NO ADDITIONAL FEE IF EXAMINED AT NEXT SUC-  
CEEDING BOARD SESSION.

*SYLLABUS:*

1. *When, pursuant to the provisions of Section 1322, General Code, an applicant submits himself for examination for a license to practice dentistry in Ohio, but fails to pass such examination, such applicant is entitled to be re-examined as to his proficiency in those branches of learning specified in such section at the next regular or special meeting of the state dental board without the payment of an additional fee, but such applicant is not entitled to be so re-examined in those subjects only, in which he has failed to secure the minimum passing grade.*

2. *An applicant for a license to practice dentistry in Ohio, who has failed to pass the examination given by the state dental board, is not entitled to be re-examined by such board at any other than the next regular or special session of such board without the payment of the fee provided by Section 1328, General Code.*

COLUMBUS, OHIO, January 15, 1934.

*Ohio State Dental Board, 1553½ N. Fourth Street, Columbus, Ohio.*

GENTLEMEN:—I am in receipt of your request for my opinion on the following questions:

"1. Can the examination of the Ohio State Dental Board for licensing of either dentists or dental hygienists be considered as one examination, and, should the applicant fail in either practical or theory, can the applicant be declared failed in the entire examination and be required to take both theory and practical at his or her next appearance or appearances before the Board for examination?"

2. In case you should decide that the examination consists of two distinct halves or parts and that credit of passing either half must be given irrespective of failure in the other half, can the Ohio State Dental Board rule as to the time limit in which credit for the half passed shall remain in force before becoming void, and requiring the re-taking of the entire examination again?"

3. How will such rulings apply to applicants who have already appeared before the Ohio State Dental Board for examination, for instance; Dr. A has passed the practical examination and has failed theory twice. Can his credit of practical now be declared "void", and Dr. A begin on a complete new examination of both theory and practical at his next appearance?"

4. Also, in the past, two examinations have been allowed for one examination fee of twenty-five dollars (\$25.00). Should Dr. E pass one half the examination and not return for two, three, or four examinations later, he has always been credited and permitted to take the second examination on the fee paid years before. Can the Board rule that the second examination for the same fee must be the next following examination? Also, what disposition can the Board make of several cases now on record who took their examination earlier than June, 1933, and have not returned for the second examination, should they ever return for second examination?"

The subjects in which an applicant must be examined and successfully pass in order to obtain a certificate to practice dentistry are controlled by the provisions of Section 1322, General Code, which reads:

"An applicant for a license to practice dentistry shall appear before the state dental board at its first meeting after the filing of his application, and pass a satisfactory examination, consisting of practical demonstrations and written or oral tests, or both, in the following subjects: anatomy, physiology, materia medica, therapeutics, metallurgy, histology, pathology, bacteriology, prosthetics, operative dentistry, oral surgery, anaesthetics, orthodontia, diagnosis, preventive dentistry and such other subjects as the board may deem necessary to meet changed conditions in dental education."

Section 1323, General Code, which is pertinent to a solution of your question, reads:

"If such applicant passes the examination he shall receive a license from the state dental board attested by its seal and signed by the president and secretary, which shall be conclusive evidence of his right to practice dentistry in this state. If the loss of a license is satisfactorily shown, a duplicate thereof shall be issued by the board."

While in Section 1322, General Code, above quoted, there is authority for the division of an examination of applicants for certificates of license to practice dentistry, into two parts, I am unable to find in the statutes with reference to the dental board (§§1315 to 1333, G. C.), any provision which either directs or authorizes the state dental board to re-examine an applicant in those subjects in which he failed to obtain a passing grade. The entire act seems to view the test of applicants conducted at a single session as *an examination* in several branches rather than as several examinations.

The term "examination" has a usual and accepted connotation. By the use of such term in its ordinary sense, English speaking people mean "a systematic investigation." The type of systematic investigation which the state board is required to make of applicants for licenses to practice dentistry is restricted by Section 1322, General Code, to an examination concerning the applicant's knowledge concerning the subjects mentioned therein and such further subjects as the board of dental examiners shall deem necessary. In other words, Section 1322, General Code, requires practical demonstrations and oral or written tests as to the applicant's mastery of certain subjects of learning. Such practical demonstrations and written or oral tests appear to constitute an examination within the meaning of Sections 1315 to 1333, General Code, within the intent of the legislature.

Section 1328, General Code, refers to an applicant who has failed in a prior examination when again submitting himself for examination as being "re-examined". Such section, in so far as is pertinent, reads:

"\* \* An applicant for a license granted upon an examination, twenty-five dollars. Such fee shall not be refunded unless the applicant is unavoidably prevented from attending the examination, but he may be examined at the next regular or special meeting of the board without additional fee.

An applicant failing at first examination may be re-examined at the next regular or special meeting of the board without an additional fee. \* \*"

Such section uses the language "failing at first examination" not "failing one or more subjects at his first examination", he may be re-examined. In other words, it would appear that the legislative intent was to consider the applicant as the one being examined, and if he did not possess sufficient ability at the time he was first examined, he could make greater preparation and submit himself at the next regular meeting for another examination.

From your inquiry, it is evident that you are considering the list of questions propounded to the applicant as "the examination." Such queries are but the means or tools by which the examination of the applicant is made by the board. The answers of the applicant are the results of, or reactions by the applicant to the examination to which he has been submitted. The examination is the act of the board of determining the proficiency of the applicant in those subjects of knowledge mentioned in Section 1322, General Code, and/or as required by the board of examiners.

It would therefore appear that, within the meaning of the Ohio statutes with reference to the practice of dentistry (§§1314 to 1333, G. C.), when an applicant has failed to secure a passing grade in his examination for a certificate of license and should again submit himself for re-examination for such purpose, the board

should subject him to such examination as will enable them to determine his competency at that time, in those branches of learning mentioned in Section 1322, and as required by the board of examiners. The extent of such examination is not laid down by the statute, but left to the discretion and judgment of the board.

I am informed that for some time it has been the practice of the Dental Board to divide the examination into two definite and distinct parts, viz., practical dentistry and theoretical dentistry, and when the applicant fails at his first examination in one of the parts of the examination but earns passing grades in the second of such parts on re-examination to treat the passing grade in such part as though obtained at the re-examination. I am not prepared to say that such conduct is not within the discretion vested in the Dental Board. It is not necessary to decide such question at this time. Your inquiry is as to whether you are obligated or required to continue such practice. I, therefore, express no opinion concerning whether such practice is within the discretion of your board.

In view of my opinion as hereinbefore set forth, it is unnecessary to answer your second and third inquiries. In view of the above discussion it is necessary to discuss one further consideration, that is, when an applicant has paid his fee pursuant to the provisions of Section 1328, General Code, and has been examined pursuant to the provisions of Section 1322, General Code, but fails to successfully pass such examination is he entitled to be re-examined at any later time other than at the next regular or special meeting without the payment of the fee for examination provided by Section 1328, General Code.

I believe the provisions of Section 1328, General Code, above quoted, are dispositive of such inquiry. Such section provides in substance, that an applicant for a license granted on examination shall pay to the secretary of the state dental board a fee of \$25.00 which shall be returned to him only if he is unavoidably prevented from taking the examination. The only exception to such rule is the provision that if the applicant fails at such examination he shall be entitled to be re-examined "*at the next regular or special meeting of the board*" without any additional fee. Such statute contains no authority for the admission of such applicant to any further examination without the payment of a fee.

Specifically answering your inquiries it is my opinion that:

1. When, pursuant to the provisions of Section 1322, General Code, an applicant submits himself for examination for a license to practice dentistry in Ohio, but fails to pass such examination, such applicant is entitled to be re-examined as to his proficiency in those branches of learning specified in such section at the next regular or special meeting of the state dental board without the payment of an additional fee, but such applicant is not entitled to be so re-examined in those subjects only in which he has failed to secure the minimum passing grade.

2. An applicant for a license to practice dentistry in Ohio, who has failed to pass the examination given by the state dental board, is not entitled to be re-examined by such board at any other than the next regular or special session of such board without the payment of the fee provided by Section 1328, General Code.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*