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A PERSON WHO IS A GRADUATE OF A 2 YEAR COLLEGE OF PHARMACY, AND WHO HAS HAD TWO YEARS PRACTICAL DRUG STORE EXPERIENCE, IS NOT QUALIFIED TO BE ADMITTED TO EXAMINATION FOR REGISTRATION, AS A PHARMACIST—§4729.08, R.C.

SYLLABUS:

A person who is a graduate of a 2-year college of pharmacy, and who has had two years' practical drug store experience, is not qualified to be admitted to examination for registration as a pharmacist pursuant to Section 4729.08, Revised Code, wherein The American Council of Pharmaceutical Education, Inc., is designated as the agency fixing the minimum course in pharmacy as a condition for admission to such examination, and under the professional educational standard set by such agency, graduation from a 4-year college of pharmacy is required for admission to such examination.

Columbus, Ohio, June 25, 1960

Hon. M. M. Ford, Secretary, State Board of Pharmacy
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“An application has been filed with the State Board of Pharmacy by a person who is a graduate of a 2-year college of pharmacy recognized by the Board. In addition such person has had two years' practical drug store experience as provided in Section 1302 General Code as effective up to July 1, 1945.

“The 94th General Assembly in 1941 amended said Section 1302 General Code to read as follows:

“Every applicant for examination and registration as a pharmacist shall be a citizen of the United States, or shall have made application therefor, shall be not less than twenty-one years of age, shall be of good moral character and habits, shall be a graduate from a school or college of pharmacy or a department of pharmacy or a university recognized and approved by the state board of pharmacy, and shall file proof satisfactory to the board, substantiated by proper affidavits of a minimum one year of experience in a retail drug store, under the personal supervision of a registered pharmacist; the experience required shall be predominantly related to the selling of drugs and medical sup-

plies, compounding prescriptions, preparing pharmaceutical preparations, and keeping records and making reports required under the state and federal statutes; provided, however, credit for the experience required may be granted only if obtained when the apprentice is not enrolled and in attendance in a school or college of pharmacy or department of pharmacy of a university, summer vacation periods excepted, and if obtained subsequent to apprenticeship registration and the age of sixteen years; provided, further, the applicant shall have completed at least the four year course in pharmacy as outlined by the American council on pharmaceutical education, inc., unless he was duly matriculated in a recognized school or college of pharmacy or department of pharmacy of a university prior to October 1, 1941; the board may accept for admission to the examination as a part of the required course of study, subjects completed in an institution other than a school or college of pharmacy or department of pharmacy of a university, provided they are subjects included in the course of study in the recognized school or college of pharmacy or department of pharmacy of a university or their equivalent and have been credited by the recognized school or college of pharmacy or department of pharmacy of a university toward the completion of its course of study, and further, that such subjects or their equivalent cover not more than the equivalent of one year of the required four year course of study.

“This act shall not apply to applicants on or before July 1, 1945 and shall not affect those who have qualified under the present requirements and have failed to register as a pharmacist.’

“In 1953 the General Assembly adopted the present Revised Code wherein former Section 1302., General Code became Section 4729.08, Revised Code. In so doing the last paragraph of former Section 1302., General Code was omitted from Section 4729.08 Revised Code. The paragraph omitted reads as follows:

“This act shall not apply to applicants on or before July 1, 1945 and shall not affect those who have qualified under the present requirements and have failed to register as a pharmacist.’

“The question before the Board is whether or not the above mentioned applicant is qualified for admission to examination for a pharmacist license before the State Board of Pharmacy.”

As pointed out in your letter, the concluding paragraph of former Section 1302., General Code, was omitted from such section in the 1953 revision of the General Code whereby such section became Section 4729.08, Revised Code. The omitted paragraph read as follows:

“This act shall not apply to applicants on or before July 1, 1945 and shall not affect those who have qualified under the present requirements and have failed to register as a pharmacist.”

The omission of the mentioned paragraph was explained in a publisher's note in Page's Code Annotated under Section 4729.08, Revised Code, with the following statement.

"This section was rewritten by the bureau of code revision to delete that portion of the second paragraph of the derivative section which exempts applicants 'on or before July 1, 1945' as sufficient registration time has been allowed those eligible to register."

At the time the legislature enacted the Revised Code, Section 1.24, Revised Code, was adopted, reading as follows:

privileges to which he is individually entitled, whether secured

"That in enacting this act it is the intent of the General Assembly not to change the law as heretofore expressed by the section or sections of the General Code in effect on the date of enactment of this act. The provisions of the Revised Code relating to the corresponding section or sections of the General Code shall be construed as restatements of and substituted in a continuing way for applicable existing statutory provisions, and not as new enactments."

Ordinarily, the deletion of the mentioned concluding paragraph of former Section 1302., General Code, by the bureau of code revision would present a question, namely, whether the interpretation placed upon the omitted paragraph by said bureau was a correct one, or did such deletion constitute a substantive change in regard to the meaning of such paragraph. I note, however, that the 103rd General Assembly passed certain amendments of such section (Amended House Bill No. 580), effective October 19, 1959. In other words, the legislature had before it Section 4729.08, *supra*, as a whole and passed it in its present form. The question as to whether or not the deleted paragraph of former Section 1302., General Code, would have had a bearing on the attention presented in your request is, therefore, a moot one at the present time.

Section 4729.08, Revised Code, as now effective, provides:

"Every applicant for examination and registration as a pharmacist shall:

"(A) Be a citizen of the United States, or shall have made application therefor;

"(B) Be not less than twenty-one years of age;

"(C) Be of good moral character and habits;

“(D) Be a graduate from a school or college of pharmacy or a department of pharmacy of a university recognized and approved by the state board of pharmacy. The applicant shall have completed at least the minimum course in pharmacy as outlined by the American Council of Pharmaceutical Education, Inc.

“(E) File proof satisfactory to the board, substantiated by proper affidavits, of a minimum of one year’s internship under the personal supervision of a registered pharmacist. The internship required shall be predominantly related to the selling of drugs and medical supplies, compounding prescriptions, preparing pharmaceutical preparations, and keeping records and making reports required under the state and federal statutes. Credit for the experience required may be granted only if obtained when the intern is not enrolled and in attendance in a college or university, summer vacation periods excepted, and if obtained subsequent to internship registration and completion of one year of work in a college or university.

“Credit may be granted to any person registered as an intern (apprentice) regardless of completion of one year of work in a college or university if he was registered as an intern (apprentice) prior to January 1, 1960.

“The requirement of one year’s internship under the personal supervision of a registered pharmacist shall be waived in the case of a member of the armed forces of the United States, who served in any capacity in any branch of the service prior to July 1, 1945, provided such applicant for examination was matriculated in a recognized school or college of pharmacy or department of pharmacy of a university prior to October 1, 1941.

“The written portion of the examination for becoming a registered pharmacist may be taken before the completion of the internship required by division (E) of Section 4729.08 of the Revised Code.”

You state that the person here considered is a graduate of a 2-year college of pharmacy recognized by the board of pharmacy. However, you have informed me that the present minimum requirement for admission to examination fixed by the American Council of Pharmaceutical Education, Inc., as provided for in subdivision (D) of Section 4729.08, *supra*, is graduation from a 4-year college of pharmacy. There appears to be some conflict here since the board would presumably not recognize a 2-year college if a 4-year course is required. Possibly, however, when the applicant completed his course, only a 2-year course was required and the board could recognize a 2-year college. Since a 4-year course is now definitely required, it clearly follows that the person here considered does

not meet the qualifications for admission to examination for registration as a pharmacist as set forth in Section 4729.08, *supra*.

I might note in this connection that there may be a question as to whether the provision in Section 4729.08 (D), *supra*, designating The American Council of Pharmaceutical Education, Inc., a private organization, for the purpose of fixing the minimum course in pharmacy required to be completed as a condition to admission of a person to examination, constitutes a delegation of legislative power, or whether such provision is merely a delegation of authority as regards the mode and manner in which the law shall be executed. This raises an interpretation of Section 26 of Article 11, Ohio Constitution, which I do not deem it appropriate to here consider, as constitutional questions are matters to be determined by the courts alone.

Answering your question, it is my opinion and you are advised that a person who is a graduate of a 2-year college of pharmacy, and who has had two years' practical drug store experience, is not qualified to be admitted to examination for registration as a pharmacist pursuant to Section 4729.08, Revised Code, wherein The American Council of Pharmaceutical Education, Inc., is designated as the agency fixing the minimum course in pharmacy as a condition for admission to such examination, and under the professional educational standard set by such agency, graduation from a 4-year college of pharmacy is required for admission to such examination.

Respectfully,

MARK McELROY

Attorney General