

## Opinion No. 55-6098

February 7, 1955

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** R. C. Derbyshire, M. D., Secretary-Treasurer, New Mexico Board of Medical Examiners, Santa Fe, New Mexico

You have requested an opinion concerning the right of a person employed by the State in some State Institution to obtain a medical license without first having taken the Basic Science Examination.

In the consideration of this problem we must consider the intent of the two acts known as the Basic Science Act and the Medical Examining Act. In the event there is a direct conflict, it will be necessary to hold that the Basic Science Act supercedes the Medical Act, since the Basic Science Act was passed by the 1941 Session of the Legislature and the Medical Act was passed in 1929. However, in the event the two acts can be reconciled, and it can be construed in such a fashion that one does not repeal the other, such a construction must be placed upon the two acts. It is the opinion of this office that the latter construction can be placed.

The Basic Science Act provides in § 67-1-1, N.M.S.A., 1953, the following:

"No person shall be eligible for examination or permitted to take an examination for a license to practice the healing art or any branch thereof, or granted any such license, unless he has presented to the licensing board or officer empowered to issue such a license, a certificate of ability in anatomy, physiology, chemistry, bacteriology and pathology, (hereinafter referred to as the basic sciences), issued by the state board of examiners in the basic sciences."

Section 67-1-19, N.M.S.A., 1953, provides the following exceptions:

"This act shall not be construed as applying to dentists, nurses, midwives, chiropodists, or optometrists, practicing within the limits of their respective callings nor to that religious sect known as Christian Scientists; nor to other persons licensed to practice the healing art or any branch thereof in this state when this act (67-1-1 to 67-1-21) takes effect; nor to persons specifically permitted by law to practice without license, practicing within the limits of the privileges thus granted to them; **nor to any person during such time that he is a regular employee of the state of New Mexico** or the United States of America, and **whose practice is confined to a state or federal institution, hospital, sanitarium, health center, or field of endeavor where the only compensation received for any services rendered as a practitioner is entirely paid by the state of New Mexico or the United States of America.**"

Thus it can be seen that a person who has a contract with a State Institution need not take a Basic Science Examination to work in those institutions. The question arises, however, whether or not such a person may be licensed without taking the examination.

Section 67-5-5, N.M.S.A., 1953, requires that no person who has not taken the examination as provided in § 67-1-1 to § 67-1-23 (Basic Science Examination) shall be permitted to be licensed unless he was a physician at the time such provision was passed. Thus it would appear that a person to obtain a license must necessarily be eligible under the provisions of the Basic Science Examination. This is further bolstered by the language of § 67-5-10, wherein the words "Practice of Medicine" are defined, and providing an exemption for persons practicing medicine in a State Institution so long as they are licensed in some State. Thus a doctor may practice in a State Institution without being licensed in the State of New Mexico. § 67-1-19, quoted above, merely activates this section and permits a doctor to practice in a State Institution when he has been certified as having a license in some other State without taking the Basic Science Examination. It does not permit licensure of individuals practicing in State Institutions without a Basic Science Certificate.

Any other holding would provide an excellent method of avoiding the requirements of the Basic Science Law, as any reputable physician may obtain employment with the United States Government, the State or a private hospital, (all of which are exceptions in the Medical Law) and would thus be permitted to obtain a license without a Basic Science Examination. We do not think that this is the intent of the law.

It is thus the opinion of this office that while a doctor may practice in a State Institution, he may not be licensed in this State until he has passed a Basic Science Examination regardless of his place of employment.

We sincerely hope that this answers your inquiry satisfactorily.

By: Fred M. Standley

Assistant Attorney General