

Opinion No. 55-6188

June 10, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: F. A. Vigil, Secretary, New Mexico Board of Pharmacy, 523 Tulane Drive, S.E., Albuquerque, New Mexico

Re: Amendment to § 67-9-7, N.M.S.A. 1953.

OPINION

Replying to your letter of June 1 in which you set out ten questions on which you would like an opinion, please be advised as follows:

1. The effective date of the amendment to § 67-9-7, N.M.S.A., 1953, is June 10, 1955.
2. The applications should supply the information deemed necessary by the Board of Pharmacy in order that the Board may determine the qualifications of the prospective candidates for license. We would suggest that perhaps you can use the applications which you presently use and require supplemental affidavits showing proof that the non-college trained candidate, provided for under the exception, has had actual and active ten years experience "in compounding, dispensing and selling drugs and prescriptions in a duly licensed retail pharmacy, at least one year of which shall have been in the State of New Mexico under the immediate personal supervision of a licensed registered pharmacist in good standing with the New Mexico board of pharmacy."
3. Section 67-9-7, N.M.S.A., 1953, as amended by Chapter 292, Laws of 1955, provides as follows:

"The board of pharmacy shall, upon application, and at such time and place and in such manner as they may determine, examine each and every person . . ."

Your board has the authority under this provision to determine the type of examination to be given. If the present examination is the type which the board believes to be suitable to determine the qualifications of each candidate, then it should be continued.
4. You should change the number on the employment affidavit to § 67-9-12, New Mexico Statutes Annotated, 1953.
5. The board is given the authority to determine the time and place of all examinations.
6. Section 67-9-7, N.M.S.A., 1953, as amended by Chapter 292, Laws of 1955, reads as follows, in part:

"Submit to the board of pharmacy proof of his qualifications and shall satisfactorily complete an examination by the board of pharmacy. . ."

Under the provisions of § 67-9-8, New Mexico Statutes Annotated, 1953, it appears that one fee entitles applicants to at least two examinations. It is our opinion that the candidates for license under this exception from college training should receive the same treatment so far as examinations are concerned as those who apply after having fulfilled college requirements.

7. This particular section of Chapter 292, Laws of 1955, which provides for an exemption from college training under specified conditions, will expire after the ninety day period stated in the law. The application for these excepted candidates for license must be filed in your office within the ninety day period.

8. It appears that under the provisions of § 67-9-7, N.M.S.A., 1953, as amended by Chapter 292, Laws of 1955, that the board can set the time for examination and that the examinations can be held at any time or place that the board may determine, and does not have to be within the ninety day period. In fact, it would seem that it would be best if the examination was set for a date after the expiration of the ninety days in order that one examination could take care of all candidates who apply under this provision.

9. Since the applicant must "submit to the board of pharmacy proof of his qualifications", it is apparent that the board can set the type of proof which will be required in order that it may determine whether there is compliance with the law. Since the board must receive the proof, it can certainly investigate the proof submitted in order to determine whether the candidate actually complies with the law. 4 A.L.R. 2d page 671.

10. We are of the opinion that this exemption from graduation from a college of pharmacy providing for examination of men who meet the specified conditions has nothing to do with reciprocity. It is a provision for the benefit of those living in New Mexico who can meet the qualifications and pass the examination.

Trusting this will answer your questions set out in your letter, we remain

By Paul L. Billhymer

Assistant Attorney General