

Opinion No. 57-138

June 17, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Fred M. Calkins, Jr.,
Assistant Attorney General

TO: Ruth A. Bauer, Secretary-Treasurer, Physical Therapists Licensing Board, P. O.
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QUESTIONS

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May the Physical Therapists Licensing Board cancel a license issued by the Board in 1953 when a recent review by the Board indicates that the licensee's original qualifications were insufficient to qualify him for licensing and registration?

CONCLUSION

No, in the absence of fraud on the part of the applicant.

OPINION

ANALYSIS

It is our understanding that a temporary license was issued by the Physical Therapists Licensing Board Registrar to an applicant in November, 1953, pursuant to § 67-10-8, N.M.S.A., 1953 Compilation, and subsequent thereto the Board permanently registered and licensed the applicant. The applicant, upon seeking registration, stated that he was a graduate of a school of physical therapy in the Commonwealth of Canada.

Section 67-10-10, N.M.S.A., 1953 Compilation, relating to the qualifications of licensing and registration of physical therapists, states:

"To be eligible for licensing and registration under this act (67-10-1 to 67-10-19) a person shall be of good moral character, at least twenty (20) years of age, be a citizen of the United States or be able to present satisfactory evidence of having applied for citizenship in the United States and a graduate of a school of physical therapy in good standing. A school of physical therapy in good standing for the purposes of this act is defined to be a school having standards at least as high as those required for approval by the Council on Hospitals and Medical Education of the American Medical Association."

At the time of the original issuance of the license, the applicant's qualifications, including schooling, were accepted by the Board. The Board is now of the opinion that the school

attended by the applicant did not have standards at least as high as those required for approval by the Council on Hospitals and Medical Education of the American Medical Association and now seeks to revoke his license. It should be noted that apparently no false representation was made by the applicant in securing registration and this opinion is rendered on the basis of that assumption.

Based upon the above premises, it appears clear that the Board could have refused to have originally issued the license. The question now arises, however, as to whether they may now revoke the license.

The following rule concerning revocation of a license is laid down in 39 Am. Jur. at page 382:

"A license granted by a board under statutory authority cannot be revoked by such board in the absence of statutory authority, or some provision in the license itself for revocation; and **where a statute or ordinance authorizes the revocation of a license for causes enumerated, such license cannot be revoked on any ground** other than the causes specified." (Emphasis added).

Turning to the specific New Mexico statute concerning suspension or revocation of a license, § 67-10-12, N.M.S.A., 1953 Compilation, states:

"The state physical therapists' licensing board may refuse to issue a license to a person or if a license has already been issued may suspend or revoke the license of such person found by the board to have:

1. Made false representations to the board in order to obtain registration and licensing.
2. Been adjudged insane or mentally incompetent.
3. Been convicted of a felony involving moral turpitude.
4. Become chronically or persistently inebriate or addicted to drugs.
5. Been guilty of unprofessional conduct as defined herein."

Upon review of § 67-10-12, we find no grounds upon which the Licensing Board may suspend or revoke the license based on the facts stated in this opinion.