

No. 147

**PHYSICIANS AND SURGEONS—STATE BOARD OF
MEDICAL EXAMINERS—FEES, authority to exact**

Held: In the absence of statutory authority, the State Board of Medical Examiners may not exact a fee from licensed physicians and surgeons for privilege of re-registering and recording such re-registrations.

June 23, 1941.

State Board of Medical Examiners
Otto G. Klein, M. D., Secretary
First National Bank Building
Helena, Montana

Gentlemen:

You have requested my opinion on the following question:

“Is the Montana State Board of Medical Examiners authorized, under the existing Medical Practice Act, to establish and exact an annual re-registration fee, collectible from all regularly licensed physicians and surgeons in the State of Montana, for the privilege of re-registering such physicians and surgeons and recording such re-registrations in their respective Montana counties?”

The State Board of Medical Examiners is a creature of statute and its members are public officers. As such, they have only such powers as are given by statute or as may be implied. Corpus Juris states:

“Except as the constitution may otherwise provide, state functions are to be performed by state officers. Generally speaking, state officers, boards, commissions and departments have such powers as may have been delegated to them by express constitutional and statutory provisions, or as may properly be implied from the nature of the particular duties imposed upon them. But executive and administrative officers, boards, departments and commissions have no powers beyond those granted by express provision or necessary implication.”

59 C. J. 111.

“It is fundamental that every administrative agency of the state must find the source of its authority in the statute conferring it.”

People v. Righeimer, 298 Ill. 611, 132 N. E. 229.

Authority to exact such fees as mentioned must, therefore, be found in some statute or necessarily implied from the nature of the duties imposed upon the Board.

Section 3120 of the Revised Codes of Montana, 1935, provides every person obtaining a certificate from the Board must record the same in the office of the Clerk and Recorder of the county wherein he resides, and must likewise record the certificate in every county to which he removes to practice. It provides the Clerk may charge the regular fee for such

recording, to be paid by the person recording. Section 3123, Revised Codes of Montana, 1935, provides for fees to be paid by an applicant for examination and admission.

I find no statute specifically authorizing your Board to exact fees other than those mentioned. It cannot be said such authority may be implied from the nature of the duties imposed upon the Board.

It is therefore my opinion that, in the absence of statutory provision, the State Board of Medical Examiners has no authority to establish and exact an annual re-registration fee from regularly licensed physicians and surgeons for the privilege of re-registering.

Sincerely yours,

JOHN W. BONNER
Attorney General