

Chiropractor—License—Penalty.

Where a chiropractor fails to pay the license fee provided for in Section 3149, Revised Codes of Montana, 1921, the penalty provided for therein can only be collected in a court proceeding where an action is brought and a judgment obtained.

Dr. F. G. Moore,
Sec.-Treas. State Board of Chiropractic Examiners,
Missoula, Montana.

My dear Dr. Moore:

You have submitted to me the following question arising out of the failure of a practitioner to pay his license fee of \$5.00 when due and whether you are justified in imposing a penalty of \$15.00 where he is in default under Section 3149, Revised Codes of 1921. You state the following proposition:

“A certain chiropractor defaulted in the payment of his renewal fee until after the expiration of the period of grace, as provided, on October first. When notified that his license had lapsed for non-payment of the regular fee, he sent \$5.00 which was returned to him, as has been the custom of this

office, believing we could no longer legally accept the fee of \$5.00, and the payment of \$20.00 was demanded if he wishes to escape court action to collect. He sent the \$20.00 and his license was renewed. Later, however, the party secured counsel and now demands the return of the \$15.00 penalty collected; contending that the board could not legally collect the penalty unless it had actually first started action to collect under the mandate of the law."

Section 3149, Revised Codes of 1921, provides:

"All persons practicing chiropractic within this state shall pay, on or before the first day of September of each year * * * a renewal license fee of five dollars. * * * If any practicing chiropractor shall fail and neglect or refuse to pay to the Board of Chiropractic Examiners the renewal license tax imposed by this act, thirty days after the same is due and payable, it shall be the duty of the secretary-treasurer to take such action for the collection of the same as is required of the County Treasurer in cases of non-payment of other licenses, as provided by Section 2414 of this code, and the provisions of said section and of Section 2416 of this code shall control all said proceedings so far as the same were applicable hereto."

Section 2414 referred to provides for an action to be commenced against any person who is required to take out a license and fails to do so for the recovery of the license tax, and, in case of recovery by the plaintiff, \$15.00 damages must be added to the judgment and costs to be collected from the defendant.

Your question then is, whether you, as Secretary-Treasurer of the Chiropractic Examining Board, may impose a penalty of \$15.00 where the party is in default, but pays up without the necessity of the action provided for in Section 2414.

It is, therefore, my opinion that this penalty may only be imposed by the Court and that it cannot be collected by the Board where no action is taken. The penalty is for the court proceeding and is added to the judgment and costs. It would follow that it could not be collected, except where an action was brought and a judgment obtained.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.