

Evidence—Medical Examiners—Public Writings.

The register of licensed physicians required to be kept by section 3117 R. C. M. 1921 is a public writing and its contents can be proved only by the production of the original or a certified copy.

Under section 3120 R. C. M. 1921 the state may prove that a person is not a licensed practitioner of medicine by showing, through the county clerk, that such person has not recorded the certificate mentioned in said section.

June 30, 1928.

Dr. S. A. Cooney,
Secretary, Board of Medical Examiners,
Helena, Montana.

My dear Doctor Cooney:

You have submitted to me a letter to you from Mr. Hildebrand, county attorney of Dawson county, with reference to your making a certificate concerning the contents of the register of licensed physicians kept by the state board of medical examiners.

Section 3117 of the code requires the board of medical examiners to keep a register which shall show whether an applicant to practice medicine has received a certificate under the act. Said section also provides that "such register is prima facie evidence of all the matters kept therein."

In my opinion, the above register is a public writing and therefore it can be proved only by the original or by a copy certified by the legal keeper thereof. (Section 10568 R. C. M. 1921.)

The rule is thus stated in 22 C. J. at page 838:

"In the absence of a statute, a negative certificate by an officer will not be evidence of the non-appearance of a fact on the records or of the absence of any entry, paper, or document from the records of his office, it being said that such negative proof requires oral testimony of a search made and of its results." (Citing authorities.)

While the law may be very inconvenient from an administrative standpoint, I regret that I know of no provision of the law that would permit the use in a criminal action of a certificate to the effect that the name of a certain person does not appear upon the register kept by the board of medical examiners.

However, I believe that the necessary proof can be furnished without the necessity of your making a trip to Glendive and producing the above register.

Section 3120 R. C. M. 1921, which is a part of the law regulating the practice of medicine, reads as follows:

“Every person obtaining a certificate from the board must, within sixty days from the date thereof, have the same recorded in the office of the county clerk in the county wherein he resides; if he removes from one county to another to practice medicine or surgery, his certificate must immediately be recorded in the county to which he removes. The county clerk must indorse upon the certificate the date of record and he is entitled to charge and receive his usual fees for such services, the fee to be paid by the applicant. Until the certificate be recorded, as provided by this section, the physician practicing under it is subject to the penalties prescribed in the Penal Code for practicing without a certificate.”

It is my opinion that under the statute above quoted, it is competent for the state to prove the fact that a person is not a licensed practitioner of medicine by placing the county clerk and recorder on the stand, and proving by him that such person has not recorded in his office the certificate mentioned in said section.

Very truly yours,

L. A. FOOT,
Attorney General.