

Opinion No. 175.**Barbers—Certificate of Registration—Suspension or Revocation Thereof—Rules and Regulations.**

HELD: The Board may suspend or revoke certificate of registration of a barber who persistently violates the rules and regulations of the board without first obtaining a conviction for a misdemeanor.

September 27, 1935.

Mr. A. F. Hamilton
Secretary, Montana State Board of
Barber Examiners
Missoula, Montana

You have advised that a certain barber shop, after inspection, was found to be operating in violation of the rules and regulations, numbered 3, 4, 5, 7, 8, 9, 10, 11, 12 and 13, made by the Board of Barber Examiners and the Board of Health. You inquire whether the Board of Barber Examiners may, after hearing before said Board, suspend or revoke the certificate of registration of the barber operating said shop in violation of said rules and regulations, or whether it is first necessary to secure a conviction in court for a misdemeanor before such suspension or revocation can be made.

Section 1 of the Act, Chapter 127, Laws of 1929, provides: "* * * the Board of Health are empowered to make and enforce all reasonable rules and regulations therefor * * *."

In pursuance of the power vested in them by said Section, the Board of Barber Examiners, acting with the State Board of Health, made fifteen rules and regulations, ten of which, upon inspection made, appear to be violated by the barber shop in question.

Section 10 of the Act, as amended by Chapter 18, Laws of 1931, enumerates what shall constitute a misdemeanor and advises the punishment therefor upon conviction. The closing sentence of this paragraph reads as follows: "In addition to the penalty hereinbefore prescribed, the Board may, after hearing, suspend or revoke

any certificate of registration by reason of any person **wilfully violating this Act or persistently failing to conform to the lawful rules and regulations promulgated by the Board.**"

It will be observed that among the things enumerated in Section 10 as constituting a misdemeanor are the following: "* * * or any person who fails to properly sterilize each and all of his tools and fails to have all linen properly laundered prior to use on each and every person * * *"

Rule 10 enumerates the tools to be sterilized and specifies how they shall be sterilized. Rule 11 provides for laundering of towels after being used on each person. While Section 10 covers the ground stated in rules 10 and 11, this Section does not cover the substance of the other rules and regulations made by the two Boards. It will be noted, therefore, that the only way the Board may enforce the rules and regulations, which Section 1 expressly authorizes it to do, is by means of the last sentence in Section 10, above quoted. A barber could not be convicted for a misdemeanor for violation of these other rules and regulations because Section 10 does not provide for it. This being true, the only way the Board can enforce these rules and regulations is by suspension or revocation of license, as provided in the last sentence of Section 10. Furthermore, nowhere in the Act does it state that such action taken by the Board must follow criminal proceedings, or that it shall be taken in conjunction with criminal proceedings. Nor do we find anything in the language used to compel us to read into the law such provision by implication.

Moreover, to require a conviction of a misdemeanor before the Board could revoke or suspend a certificate of registration would not be practical. It is common knowledge that a criminal action, especially if there be appeals, moves slowly through the courts. To permit the offending barber to operate his shop in disregard of the sanitary rules and regulations, in the meantime, would endanger the health of the public. In most instances, with the power given to the Board to suspend or revoke certificates of registration, salutary results very likely can be obtained without resort to criminal proceedings.

It is my opinion, therefore, that, regardless of whether there is a criminal complaint filed charging a misdemeanor and whether a conviction is obtained thereof, the Board in the first instance may take the action provided for in the last sentence of Section 10, by suspending or revoking certificate of registration of any barber **wilfully violating the Act or persistently failing to conform to the lawful rules and regulations promulgated by the Board.**

In regard to the proceedings to be followed and the forms in hearing before the Board, the statute does not describe the proceedings to be taken or the forms to be used in such hearing. We would advise a personal service, upon the person charged with the violation of the rules and regulations or the statute, of a written notice stating the time and place of hearing and requiring such person to appear thereat and show cause why his certificate of registration should not be revoked. A reasonable time should be allowed in order to enable such person to attend. The hearing should be held at some convenient place in the city or town where the party resides and operates his shop. The notice should specify the rules which it is claimed are violated and the facts in regard to such violation. We suggest that the Board consult the County Attorney in each case.