

No. 148

STATE BOARD OF MEDICAL EXAMINERS—PHYSICIANS—SURGEONS—CERTIFICATE, revocation of—MEDICINE—EXAMINERS, State Board of Medical

Held: The State Board of Medical Examiners may not revoke the certificate of a physician and surgeon without a hearing upon a complaint, delivered to said Board as provided by Section 3119, Revised Codes of Montana, 1935. Proceedings for revocation of certificate may not be initiated by the Board.

June 23, 1941.

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

Gentlemen:

You have submitted to me a copy of a court order issued by the Judge of the Seventh Judicial District of the State of Montana, Wibaux County, in an action entitled Eugene F. Noonan v. Geo. E. Keller, and request my opinion as follows:

“The State Board desires to know whether it is entitled to revoke the license of Dr. Keller, on the basis of the order made, without more, or whether it is obliged under the law to prefer charges against Dr. Keller and hold a formal hearing, whereat all concerned may have full opportunity to appear, testify, cross-examine, etc.

“Further, the Board desires to know whether or not the order of District Judge Leiper contains sufficient matter to warrant the Board in initiating a revocation proceeding for revocation of a certificate for ‘unprofessional, dishonorable or immoral conduct.’”

Section 3119, Revised Codes of Montana, 1935, insofar as pertinent here, provides:

“The board may refuse to grant a certificate for unprofessional, dishonorable, or immoral conduct. Before a certificate can be refused for such cause, the board must serve in writing upon the applicant a copy of any charge or charges against him, and appoint a day for hearing, at which the applicant or any witness in his behalf may appear and give testimony in refutation of such charges. . . . The board, with the concurrence of four members thereof, may revoke a certificate for unprofessional, dishonorable, or immoral conduct. Before such revocation can take place, a written complaint, specifically stating the charges against the person whose certificate is sought to

be revoked, must be delivered to the board, and a copy thereof be served upon such person twenty days before the time fixed by the board for the hearing of such charges."

This section specifically empowers the board (1) to refuse to grant a certificate and (2) to revoke a certificate for unprofessional, dishonorable or immoral conduct. It provides the procedure in each case. Before it may refuse a certificate, it must serve in writing upon the applicant a copy of the charge or charges, appoint a day for the hearing, etc. Before it may revoke a certificate, a written complaint specifically stating the charges must be delivered to the board and a copy thereof served upon the person whose certificate is sought to be revoked. The board must then fix a date for a hearing on the charges.

It will thus be seen that in the first case, that is, where the certificate is refused, the board acts upon its own initiative, while in the second case, where the certificate is sought to be revoked, the proceeding is not initiated by the board, but the board acts only upon the complaint or charges initiated by someone else, for the statute says before the board may act "a written complaint . . . must be delivered to the board." (Emphasis mine.)

It is therefore my opinion your board may not revoke the certificate of Dr. Keller on the basis of the order of the court in the instant case, but may only do so after a hearing upon a complaint in writing delivered to the board as provided in Section 3119, Revised Codes of Montana, 1935.

Sincerely yours,

JOHN W. BONNER
Attorney General