

MAINE STATE LEGISLATURE

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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

March 26, 1979

Walter W. Crites, D.M.D., Secretary
Maine Board of Dental Examiners
100 Stony Ridge
Auburn, Maine 04210

Dear Walter:

This is in response to your letter to me of March 15, 1979, wherein you state that the Board of Dental Examiners [the Board] has requested an opinion from the Attorney General's Office regarding its power to control reciprocity by regulation. Based upon the discussion which took place at the Board meeting on February 28, 1979, at which I was in attendance, I understand the question to be more specifically as follows: Can the Board adopt a valid regulation which states in effect that licensure by endorsement to practice dentistry in Maine may be granted by the Board provided the state from which the person applying for endorsement extends the same privilege to persons licensed to practice dentistry in Maine?^{1/} For the reasons set forth below,^{2/} this Office believes that such a regulation would not be valid.

32 M.R.S.A. § 1085 provides in applicable part that,

"The board [of Dental Examiners] is authorized
at its discretion, without the examination as
provided, to issue its certificate to any

1/ While this opinion will refer to licensure of dentists by endorsement, the same reasoning applies to the question of licensure of dental hygienists by reciprocity.

2/ As I noted at the Board meeting, approval of the legality of a regulation by the Attorney General's Office is required under the Administrative Procedure Act, before that rule can take effect. 5 M.R.S.A. § 8057(2); 5 M.R.S.A. § 8056(1)(A).

applicant therefor who shall furnish proof, satisfactory to the board, that he has been duly licensed to practice dentistry in another state after full compliance with the requirements of its dental laws. If licensed to practice dentistry in said other state after the first day of January, 1913, his professional education shall not be less than is required in this State, and such applicant shall have been at least 5 years in actual practice in the state in which said license was granted. . . . "3/
(emphasis added)

The Legislature has, thus, vested in the Dental Board the discretion to grant or deny a dentist a license pursuant to endorsement. However, since the Dental Board was established to protect the health and safety of the public, see, e.g., Commonwealth v. Finnigan, 96 N.E.2d 715 (Supreme Judicial Court of Massachusetts, 1950), that discretion must reasonably be exercised in the interest of protecting that public safety or health. See Goldy v. Gerber, 377 P.2d 111 (Supreme Court of Colorado, 1962); Nemer v. Michigan State Board of Registration for Architects, Professional Engineers and Land Surveyors, 146 N.W.2d 704 (Court of Appeals of Michigan, 1966); see generally C.J.S. Licenses § 38. It does not appear to this Office that the proposed Dental Board regulation has the necessary relation to protecting the health or safety of the public to sustain its validity.

Furthermore, an administrative agency, such as the Board, cannot by regulation make determinations which the legislature has intended should be made only by statute. See Coffman v. State Board of Examiners in Optometry, 50 N.W.2d 322 (Supreme Court of Michigan, 1951); Alba v. Board of Registration for Professional Engineers and Land Surveyors, 248 So.2d 367 (Court of Appeals of Louisiana, 1971). "When an administrative agency enacts a rule enlarging requirements for licensing, its rule cannot be enforced." Alba, supra, 248 So.2d at 372. An examination of Maine statutes dealing with licensure of other professionals provides assistance in determining the intent of the Maine Legislature regarding the Dental Board's ability under 32 M.R.S.A. § 1085 to regulate the specific issue under consideration by the Board.

3/ 32 M.R.S.A. § 1099 contains a similar provision relating to licensure by reciprocity of dental hygienists.

"It is a well-established rule that all statutes relating to the same subject-matter though enacted at different times, are to be deemed in pari materia, and construed with reference to each other."

Hurley v. Inhabitants of South Thomaston, 74 A. 734, 736 (Supreme Judicial Court of Maine, 1909); see Beckett v. Roderick, 251 A.2d 427 (Supreme Judicial Court of Maine, 1969).

Thus, the statute relating to licensure of podiatrists by reciprocity, 32 M.R.S.A. § 3654, contains a specific legislative determination on the issue being considered by the Dental Board. 32 M.R.S.A. § 3654 states in applicable part that,

"Any podiatrist of good moral character licensed to practice podiatry in a state maintaining a standard equal to that maintained by this State may, upon making application to the secretary of the Board . . . be licensed to practice podiatry in this State without examination. . . provided such other state extends the same privilege to persons licensed to practice podiatry in this State." (emphasis added)

Similar legislative determinations, providing that no license by reciprocity may be granted unless the State from which the applicant comes accords the same privilege to Maine applicants, are found in the statutes dealing with optometrists (32 M.R.S.A. § 2424), pharmacists (32 M.R.S.A. § 2902) and veterinarians (32 M.R.S.A. § 4861). These reciprocity provisions, which are related in subject matter to the reciprocity sections of the dental statute, provide a strong indication that the question now being considered by the Dental Board is for legislative determination only.

Very truly yours,



DAVID ROSEMAN
Assistant Attorney General

DR/ec

cc: Henry Pollard,
President Board of Dental Examiners