

MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
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August 4, 1983

John B. Madigan, M.D.
Chairman of the Board
Board of Registration in Medicine
87 Court Street
Houlton, Maine 04730

Dear Dr. Madigan:

In recent weeks, a question has arisen at the State Board of Registration in Medicine ("the Board") concerning the extent of the Board's authority to deny a temporary educational certificate, or to defer granting a temporary educational certificate, to a person seeking to become a hospital resident solely because such applicant graduated from a foreign medical school which has refused to provide information regarding the school requested by the Federation of State Medical Boards. For the reasons which follow, it is the opinion of this Department that the Board may not refuse to grant a certificate for this reason.

STATUTE

Under Maine's Medical Practice Act, 32 M.R.S.A. § 3263, et seq., one cannot serve as a hospital resident without first obtaining a "temporary educational certificate" from the Board. 32 M.R.S.A. § 3279 (1978) provides that "Any physician who is otherwise qualified under section 3271 may be licensed by the board as a hospital resident," and that such a license shall be called a "temporary educational certificate." The section referenced, 32 M.R.S.A. § 3271 (Supp. 1982), makes

clear how this certificate may be obtained, by setting forth several steps by which a person may qualify to be licensed as a physician in Maine.

First, an applicant must demonstrate his educational qualifications in one of four ways:

1) by graduating from a medical school located in the United States or Canada designated as accredited by the Liaison Committee on Medical Education (the "LCME");

or

2) by graduating from a foreign-chartered medical school which meets the guidelines for accreditation established by the LCME; or

3) by graduating from a foreign medical school, and by being evaluated by the Educational Commission on Foreign Medical Graduates (the "ECFMG") and receiving that Commission's permanent certificate; or

4) by graduating from a foreign medical school, and by completing an academic year of supervised clinical training under the direction of a medical school accredited by the LCME.

In addition, an applicant must spend "at least 12 months in a graduate educational program" approved by one of three accreditation bodies. If the applicant meets these educational and experience qualifications, he may, upon payment of a \$100 fee, be admitted to an examination^{1/} and, upon passage, be licensed if the Board finds he is "qualified" and "there exists no cause as set forth in section 3282 which would be considered grounds for suspension or revocation of his license."^{2/}

^{1/} This examination has uniformly been written in nature. Pursuant to its regulations, the Board may conduct oral examinations to test the medical knowledge of applicants. See Ch. 1, § 2(A) of the Board's Rules and Regulations. This Office expresses no opinion as to whether, should the Board determine to administer an oral examination to only one applicant, such action would violate the Equal Protection Clauses of the United States and Maine Constitutions.

^{2/} Section 3282 contains a number of specific "causes" for revocation or suspension, under the general headings of "convictions," "fraud," "illness," "incompetence," and "unprofessional conduct."

Applicants for "temporary educational certificates" to be hospital residents need not satisfy the examination stage of licensure, since it is through their residency that they satisfy the experience requirement and they cannot take the examination until the latter has been met. However, it would appear that the Board could refuse to grant the certificate for one of the legal causes set forth in Section 3282.

FACTS

This Department understands that a graduate of St. George's University, School of Medicine, located in Grenada, West Indies, has applied to the Board for a temporary educational certificate in order to serve as a resident at Maine Medical Center. This applicant, according to information in the possession of the Board, has been evaluated by the ECFMG and is a recipient of its permanent certificate. The Board also is aware that the Federation of State Medical Boards has attempted to obtain information about the quality of medical education provided at certain foreign medical schools. Apparently, St. George's University has refused to respond to questions propounded by the Federation of State Medical Boards. However, counsel for St. George's University has indicated that the University may comply with informational requests which derive directly from state medical licensing authorities.

Our understanding is that, during its July 1983 meeting, the Board voted defer action on the applicant's request for a temporary educational certificate until such time as the Board obtains information concerning the nature of medical education provided by St. George's University, School of Medicine. The issue arises, therefore, as to whether the Board has authority to deny or defer the granting of a temporary educational certificate to this applicant because of the failure of St. George's University to supply the information requested by the Federation of State Medical Boards.

DISCUSSION

As indicated above, when read in conjunction with section 3271, section 3279 of the Medical Practice Act establishes certain educational requirements for the granting of a temporary educational certificate. If an applicant satisfies one of the four educational criteria for eligibility set forth in § 3271 described above, he is entitled to receive the certificate, unless disqualified for legal cause pursuant to

Section 3282.^{3/} In the case at hand, the applicant has been evaluated by the ECFMG and has received its permanent certificate. Thus, he has satisfied the educational prerequisite of the statute. Consequently, unless the applicant can be found by the Board to have violated one of the "causes" set forth in Section 3282,^{4/} he should receive his certificate.

An argument has been made that the intent of an amendment to § 3271, enacted in 1982, was to exclude graduates of certain medical schools, such as St. George's University, from eligibility for licensure in Maine. See P.L. 1981, ch. 616, § 1, which is attached hereto. The Statement of Fact to the Legislative Document which was later enacted refers to graduates of "a number of recently established Caribbean medical schools..." which allegedly lack adequate facilities for clinical medical education. According to the Statement of Fact, "[t]his bill provides for accepting these students only if their schools meet established guidelines for accreditation." L.D. 2011, Statement of Fact (110th Legis. 1982).

The statements of purpose attached to legislative documents may be considered in interpreting ambiguous legislation. Mundy v. Simmons, 424 A.2d 135, 138 (Me. 1980). However,

"[i]t is a universally recognized principle of statutory construction that legislative intent must first be sought in the plain meaning of words used in the statute... Where the statutory language is plain and unambiguous, there is no occasion for resort to rules of statutory interpretation to seek or impose another meaning." Central Maine Power Company v. Public Utilities Commission, 405 A.2d 153, 159 (Me. 1979) (citations omitted).

^{3/} As stated earlier, applicants for temporary educational certificates need not have passed the written examination to be considered "qualified" under the Medical Practice Act. In fact, the Board has informed us that the applicant currently under consideration has taken the in New York the same examination which is given in Maine (the so-called "FLEX" examination) and has passed the examination.

^{4/} The Board may hold a hearing to consider evidence which might constitute "cause" for disciplinary action under 32 M.R.S.A. § 3282 (1978 & Supp. 1982).

In this case, the language of § 3271 is clear in that the several means by which one may satisfy first-stage eligibility for licensure are phrased in the disjunctive. On its face, P.L. 1981, ch. 616, § 1 simply added another method by which one could qualify for further consideration in the licensure process. In the absence of any other expression of legislative intent regarding this matter, we cannot adopt an interpretation of the statute which would be contrary to its plain meaning.

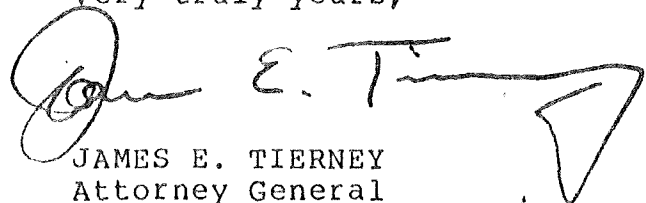
CONCLUSION

In view of the foregoing, it is the opinion of this Department that the Board cannot deny licensure or defer consideration of licensure solely because the applicant is a graduate of a medical school which has refused to provide information to the Federation of State Medical Boards. The Legislature has addressed the question of appropriate educational qualifications for applicants for licensure. Under the plain language of § 3271, an applicant need not have graduated from a foreign medical school which meets accreditation guidelines if the applicant has succeeded in obtaining a permanent certificate from the ECFMG. If the Board believes that the language of the statute allows applicants with inadequate medical educations to qualify for licensure, the Board may wish to propose ameliorative legislation. Of course, this Department would be available to assist the Board in the preparation of such legislation.

To summarize, the person whose application for a temporary educational certificate is pending before the Board has satisfied the educational requirement for the certificate. The Board may now determine whether any legal cause exists which would constitute grounds for denial of licensure. The Board could, however, not deny licensure based on a finding that the applicant has not obtained an adequate medical education.

I hope that the foregoing proves helpful to the Board.

Very truly yours,


JAMES E. TIERNEY
Attorney General

cc: George E. Sullivan, M.D.
Secretary of the Board

JET/dab