

**OPINION
45-189**

September 11, 1945 (OPINION)

MEDICINE

RE: Practice of in Hospitals - Graduate Without License

I acknowledge your letter of September 7, in which you ask for an opinion on the following questions:

1. Is it legal for a graduate in medicine and surgery from an approved college to practice as a hospital resident in any hospital in North Dakota, before being licensed in this state?
2. Has the Board of Medical Examiners authority to grant a temporary license, without examination, to such graduates to practice in said hospitals?"

When you refer to a hospital resident, I take it that that does not include an intern, but refers to a physician and surgeon who is qualified to practice in his own right, if licensed.

I have studied carefully the laws with reference to the licensing of physicians and surgeons, as contained in chapter 43-17 of the North Dakota Revised Code of 1943. Section 43-1716 of said chapter states:

No person shall practice medicine in this state unless he has obtained from the board a license to do so."

The only exception to the requirement for an examination to practice medicine is contained in section 43-1719.

Section 43-1729 states:

No person shall engage in the practice of medicine and surgery in this state until the annual registration fee has been paid. The violation of this section by any practitioner of medicine shall be cause for his suspension from such practice and the revocation of his license by the board."

It would appear to me that no one may practice medicine or surgery as a hospital resident in any hospital in the state of North Dakota before being licensed under the law as a physician and surgeon. Nor do I find any statutory authority giving the board of medical examiners the right to grant a temporary license without examination to such graduates to practice as residents of a hospital. A license may be granted without examination only to those who come within the terms of section 43-1719 and that applies only to those who have been educated in other states or foreign universities, and in that case, the board may issue a license to practice medicine in this state without giving an examination, if it is satisfied that the applicant is qualified to practice medicine and surgery, based upon an examination of his credentials, relating to:

1. His general reputation;
2. His preliminary education and the course of study he has pursued;
3. The degrees he has received;
4. The number of years he has been engaged in the lawful practice of medicine;
5. His experience in hospitals, medical departments of the army or navy, and public health and marine hospital service;
6. The licenses granted to him by other states and countries;
7. His experience as a teacher of medicine.

It is, therefore, the opinion of this office that, before a graduate in medicine and surgery from an approved college may practice as a hospital resident in any hospital in North Dakota, he must be licensed, and, further, that the board of medical examiners has no authority under and by virtue of the statutes of this state to issue a temporary license to such graduate to practice as such resident physician and surgeon in any hospital in this state.

NELS G. JOHNSON

Attorney General