

**OPINION
60-165**

July 13, 1960 (OPINION)

OCCUPATIONS AND PROFESSIONS

RE: Physicians and Surgeons - Licenses - Exemptions

This is in reply to your letter of July 1, 1960, in which you ask for an interpretation of section 43-1702, subsection 2, of the 1957 Supplement to the N.D.R.C. of 1943, which states as follows:

Any physician residing on the border of a neighboring state and duly licensed under the laws thereof, who does not open an office or appoint a place to meet patients or to receive calls within this state;"

You further advise that this inquiry is prompted on belief that surgeons from Winnipeg and Regina come into towns near the borders in North Dakota and operate in the hospitals.

Basically there appears to be no question that a state has the authority to require physicians and surgeons to obtain a state license before they may engage in the practice of medicine in the state. As to the question at hand, it is observed that it is an exemption to the general provisions relating to physicians and surgeons. In other words, the above-quoted statute is prefaced with the language, "The provisions of this chapter shall not apply to the following."

The rule of law pertaining to exemptions relating to license or certificate to practice medicine or surgery is rather specific (70 C.J.S., Section 9, page 830). This rule in substance is that the statutory exemption is available to a person only when he, or the services performed by him, is within its terms. In other words, a person who intends to rely upon an exemption must bring himself fully within all of the provisions of the exemption before the exemption will apply.

The statute in question is subject to construction. However, in analyzing it, we find the terms "on the border," and "neighboring state," to be two key phrases. The term "state" as used in the statute seemingly refers to another state of the United States and does not include the Province of Canada or Canada proper itself. There is a division of authority as to what is embraced in the term "state." The greater weight of authority holds that the term "state" has a reference to a state of the United States and does not include a foreign state or country. See *Boissevain v. Boissevain* 231 N.Y.S. 529, *People v. Black* 54 Pac. 385, and *Employers Liability Insurance Company v. Insurance Commissioner* 31 N.W. 542. Also see *Andres v. U.S., Hawaii* 33 U.S. 740.

The term "state" as used in the above section refers to another state of the United States and does not include the provinces of Canada or Canada proper.

The other term "residing on the border" has reference to a locality adjacent to, adjoining, or abutting the State of North Dakota. It is noted that the Legislature used the term "on the border" rather than the term "close to the border." Taking into consideration the geographical location of North Dakota with reference to other states, it becomes somewhat apparent the Legislature had in mind situations like Fargo and Moorhead, and Grand Forks and East Grand Forks. Both cities, Winnipeg and Regina, are some distance from the borders of North Dakota and would not come within the language "on the border." They are not on the border.

That the statute in question does not apply to Canada or its provinces becomes more apparent when we consider the provisions of 43-1722 of the 1957 Supplement to the N.D.R.C. of 1943 wherein it cites certain conditions under which a temporary license may be granted to a person who is not a citizen of the United States, but who is in the process of becoming a citizen of the United States. Even then he must practice the profession within this state.

It would not seem that the Legislature would make a special provision for issuing a temporary license to an alien and then enact law which would put such individual in the exemption classification because of residence on the border of a neighboring country.

It is therefore our opinion that the statute in question does not apply to surgeons and physicians residing in Winnipeg and Regina so that they may come into hospitals in the State of North Dakota and practice their profession.

It might be well to mention that the general rule of law is that any person aiding an unlicensed person to practice his profession places himself in jeopardy, and is grounds for revoking the license of the person aiding the unlicensed person. See Am. Jur., Physicians and Surgeons, Section 53.

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