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ARIZONA ATTORNEY GENERAL

April 22, 1954
Letter Opinion
No. 54-115-L

Mr. Robert Carpenter
Executive Secretary
State Board of Medical Examiners
401 Security Building
Phoenix, Arizona

Dear Bob:

Enclosed please find our opinion pertaining to the power of the Board of Medical Examiners to require an applicant for licensure who is a member of the Seventh-Day Adventist Church to appear for oral examination on a Saturday.

After thorough research, we have determined that the question is an extremely close one.

If the Board of Medical Examiners chooses to compel an appearance on a Saturday by a person whose religious scruples prohibit this, the case will necessarily be contested in court, probably in the near future. For the Board to be properly cognizant of its powers in this regard, it is necessary that the matter be judicially determined.

The main consideration of a court in determining the issue, is whether the requirement of the Board that an applicant appear on a Saturday is a reasonable one under all the circumstances of each individual case.

We believe that it is quite probable that a court would declare such a requirement a proper one and not an interference with the Constitutional provisions relating to freedom of religion.

We hope this information will be of assistance to you and the members of the Board of Medical Examiners.

Sincerely,

WILLIAM T. BIRMINGHAM
Assistant to The
Attorney General

WTB:lr
encl. Letter Opinion No. 54-115-L

*Birmingham
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Mr. Robert Carpenter
Executive Secretary
State Board of Medical Examiners
401 Security Building
Phoenix, Arizona

Re: Where the statute prescribes that the meeting of the Board of Medical Examiners shall be on a Saturday, may the Board require members of the Seventh-Day Adventist Church who desire to be licensed to practice medicine to appear on a Saturday for purposes of oral examination?

Dear Mr. Carpenter:

The procedure for obtaining a license, like all other phases of the practice of medicine, is fundamentally a matter of legislation.

Section 67-1101, A.C.A. 1939, as amended in 1954, specifies that on and after July 10, 1954, the Board of Medical Examiners shall hold its meetings on the third Saturday of January, April, July and October of each year.

The sole provision relating to the giving of oral examinations is set forth in Section 67-1103, A.C.A. 1939, as amended, and reads in part as follows:

"67-1103. Certificates to practice.---

* * * * *

* * * In the event of oral examinations, questions and answers shall be taken verbatim by a stenographer or steno-typist and a transcript thereof made and duly filed in accordance with the provisions for the filing of papers for written examinations. * * * "

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Since the statute prescribes no definite date on which an oral examination is to be given, it appears to be well within the power of the Board of Medical Examiners to provide through its rules and regulations for the oral examination on one of its regular Saturday meeting dates as set forth in Section 67-1101, supra.

Those laws passed by the Legislature delegating to the Board of Medical Examiners the power to regulate the licensing of doctors are authorized under the police power of this State for the protection of the health, welfare and safety of all citizens.

It is well settled that the police power of a state is very broad and far-reaching. The possession and enjoyment of all rights is subject to the reasonable exercise of the police power and everything contrary to public policy or inimical to public interest is subject to its exercise. Although the police power is an inherent attribute of sovereignty and is founded on the duty of the state to protect its citizens and provide for the safety and good order of society, this power is subject to the limitation that its exercise must be reasonable and for the public good. Hence, the police power cannot be exercised to override the demands of natural justice. 16 C.J.S., Constitutional Law, Section 195, p. 562.

The basic and essential test of the validity of the exercise of the police power is whether it is reasonable under all the circumstances in each individual case. For a proper consideration of the problem herein involved, it is essential to scrutinize several provisions of both the United States and Arizona Constitutions.

U. S. Constitution:

"ARTICLE I

Religious and political freedom.--
Congress shall make no law respecting
an establishment of religion, or pro-
hibiting the free exercise thereof;
* * * "

U. S. Constitution:

"ARTICLE XIV

§ 1. Citizenship--Due process of law-
Equal protection.-- * * * No state shall
make or enforce any law which shall
abridge the privileges or immunities
of citizens of the United States; nor
shall any state deprive any person of

life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Arizona Constitution:

"ARTICLE XX, SECTION 1

Religious toleration.--Perfect toleration of religious sentiment shall be secured to every inhabitant of this state, and no inhabitant of this state shall ever be molested in person or property on account of his or her mode of religious worship, or lack of the same."

None of the provisions of the United States Constitution and Arizona Constitution is more venerated by the people or respected by the legislatures and courts than those which proclaim for our country the freedom of religion. Although the purpose of the above-quoted constitutional provisions is to allow the widest practical scope for the exercise of freedom of religion, the prohibition against interference is not absolute. Such rights are subject to the exercise of reasonable regulations promulgated under the police power of the state for the benefit of every citizen. Likewise, no person has an absolute, unqualified or vested right to practice medicine or surgery until licensed by the proper authorities as provided by law.

Therefore, assuming that the religious scruples of a member of the Seventh-Day Adventist Church would prohibit him from appearing for oral examination on a Saturday, it is our considered opinion that the Board of Medical Examiners can properly, under police power delegated to it by the Legislature of Arizona for the licensing of medical doctors, deny a license to practice medicine for failure of an applicant to appear on a Saturday specified by the Board for the purpose of medical examination notwithstanding the constitutional guaranties of freedom of religion.

Very truly yours,

WILLIAM T. BIRMINGHAM
Assistant to The
Attorney General

WTB:LR