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April 20, 1955
Opinion No. 55-87

REQUESTED BY: Dr. Russell Peterson
Board of Osteopathic Physicians and Surgeons
2747 E. McDowell Road
Phoenix, Arizona

OPINION BY: ROBERT MORRISON, The Attorney General
H. B. Daniels, Assistant Attorney General

QUESTION: Does the Board of Osteopathic Physicians have the power to approve for interne training hospitals not on the American Osteopathic Association list of hospitals approved for interne training?

CONCLUSION: No.

QUESTION: Does the Board of Osteopathic Physicians have the right to establish policy to limit granting of Osteopathic Major Surgical Certificate to applicants who have attained Candidate or higher status, etc., or other qualifications?

CONCLUSION: No.

In answer to the first question, we invite your attention to the hereinafter quoted portions of Article 21 entitled "Osteopathic Physicians and Surgeons." In Section 67-2123, Arizona Code of 1939, as amended, Cum. Supp. 1952, the following is found:

"The board * * * shall have full power and authority to make and adopt rules and regulations necessary and proper for administration * * *."

and in the same section it is further provided, that:

"* * * The board is charged with and shall enforce within the osteopathic profession in this state the standards and practice prescribed by this act. * * *",

also, this section further provides:

"The board shall designate which hospitals are approved for interne training and which

osteopathic schools, or colleges are approved, provided an approved school, college or hospital shall have at least the minimum standards established by the American Osteopathic Association." (Emphasis supplied)

While the Board has power to enact or promulgate rules and regulations necessary for the proper administration of this act (67-2121 to 67-2139, Arizona Code of 1939) Cum. Supp., 1952, it cannot lawfully extend this rule-making power to a point where it subverts the statute granting it such power or which repeals or abrogates the Act. It is clear that the Legislature has set the standards for hospitals, and these standards cannot be changed under the rule-making power of the Board. We are, therefore, of the opinion that a rule promulgated by the Board, approving hospitals not on the list of the hospitals approved by the American Osteopathic Association, would be invalid, as outside the power of the Board to enact.

The hereafter quoted part of Section 67-2129, fully answers the second question. This section provides for the practice of medicine and surgery by licensed osteopathic physicians and surgeons generally, except that:

" * * * No osteopathic physician or surgeon shall perform major surgery unless he has had two (2) years surgical training in a hospital approved for such training by the board or shall demonstrate to the board equivalent training * * *." (Emphasis supplied)

This provision expressly provides the minimum requirements necessary to perform major surgery in Arizona. To raise this requirement would be to set a standard not contemplated by the Legislature.

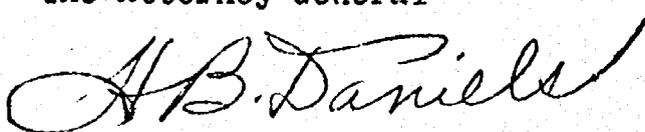
Boards and commissions have power to enact rules and regulations. Such a power is administrative and not legislative. It is, therefore, a limited power. 42 Am. Jur. 254, Sec. 49. The delegation of the power to make rules and regulations cannot extend to the making of rules which subvert the statute reposing such power, or which are contrary to existing laws, or which repeal or abrogate statutes. 42 Am. Jur., supra. A board cannot, under the exercise of its power to make rules and regulations, issue a regulation which is out of harmony with, or which extends, alters or limits the statute being administered, or which is inconsistent with the expression of the lawmakers' intent in other

Dr. Russell Peterson, D. O.
Board of Osteopathic Physicians and Surgeons

April 20, 1955
Page Three

statutes. Where a right is granted by statute, the officer administering it may not, by regulation, add to the condition of that right not stated in the statute, nor bar from that right a person included in the terms of the statute. 42 Am. Jur. 360, section 53. The Board is without power to enact such policy. We, therefore, must answer the posed question in the negative.

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55-87