

N.D.A.G. Letter to Wheeler (April 27, 1988)

April 27, 1988

Mr. R. W. Wheeler
Special Assistant Attorney General
P.O. Box 2056
Bismarck, ND 58502

Dear Mr. Wheeler:

Thank you for your letter of March 25, 1988 inquiring as to statutory qualifications for physician licensure. Specifically, you inquire, on behalf of the Board of Medical Examiners, whether the Board has the power to waive the requirements of three years post graduate training for foreign medical graduates.

The statutory qualifications for physician licensure are set out in N.D.C.C. § 43-17-18. N.D.C.C. § 43-17-18(3) of that statute provides as follows:

43-17-18. Qualifications of applicant for examination. An applicant for a license to practice medicine shall present evidence satisfactory to the board of the following qualifications:

....

3. If the applicant is a graduate of a medical or osteopathic college that has not been approved by the board or accredited by an accrediting body approved by the board at the time the degree or its equivalent was conferred, a certificate issued by the educational council for foreign medical graduates, proficiency in writing and speaking English, and the successful completion of three years of postgraduate training in a program approved by the board or by an accrediting body approved by the board. The board may license an applicant with one year of residency training in the United States or Canada who has been approved for faculty status in psychiatry by the university of North Dakota and its medical school.

It is fundamental that the Board, as an administrative agency, has only such authority or power as is granted to it by statute or necessarily implied from the grant. See First Bank of Buffalo v. Conrad, 350 N.W.2d 580 (N.D. 1984). The Board's power to grant or withhold a license to practice medicine must be exercised within the standards or statutory guidelines established by the Legislature. Administrative regulation may not exceed statutory authority or supersede a statute. Moore v. N.D. Workmen's Compensation Bureau, 374

N.W.2d 71 (N.D. 1985).

It must, therefore, be concluded that the Board of Medical Examiners has no authority to waive the statutory requirement of three years of post-graduate training for foreign medical graduates as a requirement for a license to practice medicine in this state.

Sincerely,

Nicholas J. Spaeth

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