

language of the statute to conclude that the term "wages" in section 556 includes benefits receivable by or on behalf of the worker under a group insurance policy.

FRANK J. KELLEY,
Attorney General.

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MEDICAL PRACTICE ACT: License Revocation.

Grounds for refusal to continue a certificate or license are limited to those offenses listed under "unprofessional and dishonest conduct" in Section 3, Sixth, of the Medical Practice Act.

No. 4423

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Mr. Lenton G. Sculthorp, Director
Department of Licensing and Regulation
1033 S. Washington Avenue
Lansing, Michigan

Your office has asked for an opinion on the following question:

"Is the Board of Registration in Medicine limited in responsibility to those offenses listed under unprofessional and dishonest conduct, Section 3, Sixth of the Medical Practice Act, to the exclusion of other forms of unprofessional conduct such as unnecessary surgery which does not constitute a criminal assault nor cause harm to the patient."

Basically this question relates to the problem of whether the phrase "unprofessional and dishonest conduct" as used in the Medical Practice Act can be invoked as a separate and independent ground for disciplinary action or whether such action may be taken against an individual by the Board of Registration in Medicine only with respect to the specific kinds of misconduct listed in Section 3, Sixth, of the Act.

Section 3, Paragraph Sixth, of the Medical Practice Act (Act 237, P.A. 1899, as amended; M.S.A. 1965 Cum. Supp. § 14.533; C.L.S. 1961 § 338.53) provides in pertinent part as follows:

"The board of registration in medicine may refuse to issue or continue a certificate of registration or license provided for in this section to any person guilty of grossly unprofessional and dishonest conduct. The words 'unprofessional and dishonest conduct,' as used in this act, are hereby declared to mean:

[then follow 10 subdivisions which are denoted (a) through (j), inclusive, setting forth certain specific improper acts such as —

"(a) The procuring, aiding or abetting in procuring a criminal abortion;

"* * *

"(c) The wilfully betraying of a professional secret;

"* * *

"(i) Being guilty of offenses involving moral turpitude, habitual intemperance, or being habitually addicted to the use of morphine, opium, cocaine, or other drugs having a similar effect; * * *"]

It has been said that the statute under which revocation is sought is the sole source of power to revoke thereunder, and that revocation cannot be predicated on acts of unprofessional conduct not specified in the statute or embraced within its terms. *41 Am. Jur., Physicians and Surgeons*, § 48, p. 175.

The Michigan Supreme Court has recognized the rule of statutory limitation on power of the Board of Registration in Medicine to determine cause for revocation in *In re Van Hyning*, 257 Mich. 146 (1932), the Court, at pages 150 and 151, stating:

"It is contended by the defendant that the provision of the statute which gives the State board of registration authority to revoke a physician's certificate to practice medicine on the ground of 'unprofessional and dishonest conduct,' and defines such conduct as 'having professional connection with, or lending one's name to an illegal practitioner,' is unconstitutional because it gives the board power to revoke without furnishing it with a definite and certain standard under which to administer the power. We agree with the defendant that the power to revoke is vested in the legislature and may not be delegated. The board cannot legally be clothed with power to say what acts of professional misconduct shall constitute cause for revoking a physician's license to practice medicine. But the legislature may by statute create a standard of conduct under which it may lawfully act. It is the contention of the defendant that the standard created by the statute in question is so indefinite and uncertain that it leaves to the board the exercise of its own judgment as to causes for revocation of a physician's license. We are unable to agree with this contention. If the statute merely declared that a license should be revoked for 'unprofessional and dishonest conduct,' it would be open to the objection made by the defendant. But it goes farther, and defines 'unprofessional and dishonest conduct' to be 'having professional connection with, or lending one's name to an illegal practitioner.' There is nothing indefinite about this definition. *It leaves nothing to the judgment of the board as to what shall constitute cause for revocation*, and definitely enough informs the defendant in advance what acts of professional misconduct may bring about a forfeiture of his license to practice medicine. No more is necessary to satisfy the constitutional requirements." (Emphasis added)

The Michigan Supreme Court in *Michigan State Board of Registration in Medicine v. Wicker*, 280 Mich. 600 (1937), also observed that the power of the Board of Registration is subject to express statutory limitations. The Court there stated at pages 604 and 605:

"Careful review of this record shows the only charge established against defendant which is sufficiently stated in the notice served upon him was that he unlawfully used the title 'Dr.' As hereinbefore noted, such use was admitted. But appellant contends (as he did at the

hearing before the board) that it was not within the scope of the authority of the board to revoke or suspend his license for this improper use of the term 'doctor' or abbreviation 'Dr.,' notwithstanding the provision of the statute above quoted. This contention is based upon the specific provisions found in the sixth subdivision of 2 Comp. Laws 1929, § 6739, which in part reads as follows:

"The board of registration of medicine may refuse to issue or continue a certificate of registration or license provided for in this section, to any person guilty of grossly unprofessional and dishonest conduct. The words "unprofessional and dishonest conduct," as used in this act, are hereby declared to mean: and here are added nine subdivisions (a to i, inclusive) defining the specific things which within the terms of the statute, constitute 'unprofessional and dishonest conduct.'

"In this manner the statute governing the power of the board has provided express limitations. *Beyond such express limitations the board has no power to discipline.* A reading of the statute, which we have not quoted in full, will disclose that neither expressly nor by fair implication can the improper use of the word 'doctor' or the abbreviation 'Dr.' be found to be included in any of the subdivisions of the statute defining and limiting what constitutes 'unprofessional and dishonest conduct.' *It follows that the board, which is a purely statutory body having only statutory powers, was without authority to suspend or revoke defendant's license because of his improper use of the word 'doctor' or the abbreviation 'Dr.'*" (Emphasis added)

Therefore, I conclude that, in determining whether a particular misconduct alleged constituted one of the grounds under a statute authorizing revocation or suspension of a medical license, determination is not to be left solely to subjective judgment of the Board but must be expressed in legislative norms, either under the statute authorizing the action taken or in some other statute of a penal or regulatory nature which the licensee may have violated. In the instant matter the legislative norms have been expressed by listing 10 specific grounds upon which disciplinary action may be brought and the legislature has made its intent clear by stating that "The words 'unprofessional and dishonest conduct,' as used in this act, are hereby declared to mean: * * *" so that these are the only grounds upon which the Board has authority to base disciplinary action. If the Board of Registration in Medicine is to have power to refuse issuance or continuance of a certificate of registration or license for such forms of unprofessional conduct as unnecessary surgery which does not constitute criminal assault nor cause harm to a patient, the statute from which it derives its authority will have to be amended.

FRANK J. KELLEY,
Attorney General.