

in three earlier opinions, has held that citizenship requirements as a prerequisite to licensure as a barber or nurse are unconstitutional⁴, and I am of the opinion that such a requirement is unconstitutional when applied to real estate brokers and salesmen. Under familiar rules of statutory construction⁵, the invalidity of these provisions will not affect the other valid provisions of the act. Accordingly, your question is answered in the negative.

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PHYSICIANS, SURGEONS: Citizenship Requirements.

CONSTITUTIONAL LAW: Citizenship Requirement A Denial of Equal Protection of Laws.

The requirement that an applicant for a license to practice medicine be a citizen of the United States is unconstitutional as a denial of equal protection of the law.

No. 4755

November 9, 1972.

John M. Wellman, M.D., Executive Secretary
Board of Registration in Medicine
1033 South Washington Avenue
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This is in response to your request for my opinion on whether the requirement of United States citizenship for medical licensure under section 3 of the medical practice act, 1899 P.A. 237¹, is constitutional. That section reads in pertinent part:

“. . . This registration and certificate shall be granted to such applicant as shall furnish satisfactory proofs of being at least 18 years of age, and evidence of being either a citizen of the United States or of having valid second naturalization papers, and of good moral and professional character. . . .”

The fourteenth amendment to the federal constitution,² reads:

“. . . 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.”

It has long been held that the term “person” as used in the fourteenth amendment includes lawfully admitted resident aliens as well as citizens,

⁴ O.A.G., 1941-1942, No. 20579, p. 261 (July 28, 1941); O.A.G., 1947-1948, No. 705, p. 589 (July 11, 1948); O.A.G., 1963-1964, No. 4248, p. 316 (March 16, 1964).

⁵ *Baldwin v. North Shore Estates Association*, 384 Mich. 42 (1970); M.C.L.A. 8.5; M.S.A. 2.216.

¹ As last amended by 1972 P.A. 12; M.C.L.A. 338.53; M.S.A. 14.533.

² U.S. Const, Am. XIV, §1.

and that equal protection of the law is afforded to citizens and aliens alike. *Graham v. Richardson*, 403 U.S. 365, 91 S. Ct. 1848, 29 L. Ed. 2d. 534 (1971); *Takahashi v. Fish & Game Comm.*, 334 U.S. 410, 68 S. Ct. 1138, 92 L. Ed. 1478 (1948); *Truax v. Raich*, 239 U.S. 33, 36 S. Ct. 7, 60 L. Ed. 131 (1915); *Kick Wo v. Hopkins*, 118 U.S. 356, 6 S. Ct. 1064, 30 L. Ed. 220 (1886).

A legislative classification, such as one distinguishing between citizens and aliens, can be sustained only if it relates to the purpose of the act in which it is found. The purpose of the medical practice act is to protect the health and welfare of the people of this state by insuring that medical practitioners meet all the minimum requirements pertaining to education and practice. There is no rational basis for distinguishing between citizens and aliens for, if an alien applicant for licensure meets all of the requirements pertaining to education and practice contained in the medical practice act, the purpose of the act is served and the people of this state are assured that the individual applicant has met the requisite standards of competence.

The Supreme Court of Michigan in *Templar v. State Board of Examiners of Barbers*, 131 Mich. 254 (1902), struck down the citizenship requirement in the barber act for the reasons cited above. In that opinion the court analogized that citizenship was no more important for licensure as a barber than the practice of medicine, stating:

“ . . . We think it must be considered as settled that, in the protection of the public health, the legislature has the right to provide for an examination of all persons who seek to engage in the practice of medicine, and to have their qualifications passed upon by a properly constituted board. But the practice of medicine is no more an incident of citizenship than the practice of the trade of a barber. . . .” (p. 257)

Likewise this office has previously held as unconstitutional the citizenship requirement for licensure as a nurse,³ barber⁴ or practitioner of mortuary science.⁵

Accordingly, it is my opinion that section 3 of the medical practice act, which requires evidence of being either a citizen of the United States or having valid second naturalization papers for licensure, is unconstitutional as a denial of equal protection of the laws in violation of the fourteenth amendment of the Constitution of the United States.

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³ O.A.G., 1947-1948, No. 705, p. 589 (June 11, 1948).

⁴ O.A.G., 1941-1942, No. 20579, p. 261 (July 28, 1941); O.A.G., 1963-1964, No. 4248, p. 316 (March 16, 1964).

⁵ Letter dated June 8, 1964, addressed to Mrs. Thelma Whitlock, Executive Secretary, State Board of Mortuary Science.