

.....day of....., 19...., and same is hereby signed and countersigned by its president and secretary.

.....  
President.

.....  
Secretary.

I think the above contract has in it, the essential elements of a limited insurance contract. This is not the case of an attorney-at-law, for example, entering into a contract for *personal services* to defend actions for negligence or malpractice for a stipulated fee. Clearly, the contract contemplates more than *personal services* to be rendered by the contracting party. It binds the "bureau" to "*employ* competent legal services" and contemplates the incurring and payment of certain expenses in defending suits which the bureau agrees to do, and provides a limitation on such expense as applied to any one case.

In my opinion, the bureau would not be entitled to sell the above contract in Indiana without compliance with the appropriate insurance laws of the state.

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**MEDICAL REGISTRATION AND EXAMINATION, BOARD  
OF: Educational requirements necessary to entitle person to take examination.**

July 24, 1933.

Hon. F. S. Crockett, M. D., Secretary,  
Indiana State Board of Medical Registration and  
Examination,  
Indianapolis, Indiana.

Dear Sir:

I have before me your letter requesting an official opinion with respect to certain provisions of the minimum requirements fixed by your board as a prerequisite to the issuance of a certificate for a license to practice medicine as provided in section 12239 of Burns Annotated Indiana Statutes of 1926.

The provision of the statute brought under consideration by your inquiry is as follows:

"The state board of medical registration and examination shall, from time to time, establish and record in a record kept by them for that purpose, a schedule

of the minimum requirements which must be complied with by applicants for examination for license to practice medicine, surgery and obstetrics before they shall be entitled to receive such license. The said board shall also, in like manner, establish and cause to be recorded in such record a schedule of the minimum requirements and rules for the recognition of medical colleges, so as to keep these requirements up to the average standard of medical education in other states. After the year 1897, no change shall be made in such schedule of requirements in any year after the month of January of such year, nor shall any change be made to have any retroactive effect, or that shall affect students theretofore matriculated."

Burns Annotated Indiana Statutes of 1926, section 12239.

You state that:

"The Committee on Medical Education of the American Medical Association, the Association of Medical Colleges and the Federation of State Boards have adopted a certain standard of education for licensure, which includes the following: "That the minimum time *should* be four courses in a recognized school; that forty-two months *should* elapse between matriculation and graduation.' This standard of minimum requirements has been adopted by this board in conformity with that section of the medical law which provides that the rules and regulations adopted by the board at its annual meeting in January shall have the force and effect of law." (Our italics.)

You make the following further statement of facts and submit the following questions:

"The University of Chicago, and Rush Medical College, which is a part of the university, conducting its work on the west side of Chicago, have their courses arranged in the quarterly system and require that at least three quarters per year shall constitute a course.

"(a) Three quarters per year will allow a student to complete his required work in forty to forty-one months.

“(b) By remaining in residence four quarters per year, thirty-six continuous months, a student can also complete his courses in medicine and be graduated.

“The work is, of course, thoroughly standard in schools in more than usual reputation and each is a recognized institution within the meaning of the law.

“Question: Is the board acting within its proper authority if it admits to examination graduates of recognized medical schools who permit graduation in less than forty-two months elapsed time, matriculation to graduation, as required through formal action of our board as stated above? Can the board, in other words, construe its own official action in between those annual meetings at which the law permits the board to adopt regulations having the force and effect of law? To come to a particular instance, can the board legally issue a license to a graduate of Rush Medical School, who has received his diploma in less than the forty-two months of elapsed time required by the formal ruling of our board, or must the board wait until its annual January meeting next and change this ruling, if it wishes to change at that time, and then issue a license to a candidate for licensure as described?”

In my opinion, the above provision of the statute requiring the board to fix minimum requirements which must be complied with by applicants for examination for license to practice medicine, surgery and obstetrics before they shall be entitled to receive such license, has reference to such requirements as are properly related to the qualifications necessary to enable the applicant to practice medicine with safety to the public. Certainly, the board could not, under the above provision, make whimsical requirements that would be binding, and while I do not think the requirement under consideration could be classed as whimsical, yet it is not easy for a person outside of the medical profession to see a very definite relation between the qualifications for the practice of medicine and the length of time which elapses between matriculation in and graduation from a recognized medical college. If the requirement provided a certain number of *months in school*, the question would be different, but it is hard to see how the applicant referred to, having graduated from a rec-

ognized medical college, would be any better qualified to practice by waiting a few months, possibly doing nothing, than he was qualified at the time of his graduation. If I understand the facts, the applicant has already graduated from a recognized medical college, less than forty-two months having elapsed between his matriculation and graduation. That fact can not be changed by his waiting until January, 1934. It would still be true that less than forty-two months had elapsed from matriculation to graduation, and under a strict construction of the board's requirement, he never would be able to secure a license under the Indiana law without again matriculating and after forty-two months again graduating.

I think there is some doubt as to whether the above requirement as to length of time which should elapse between matriculation and graduation is valid. Your attention, however, is called to the fact that the language used therein is directory only and should be treated simply as a recommendation. The language is not in terms mandatory. After all, I think, the answer to your questions is resolved by the further question as to whether the particular medical college meets the requirements of the board. Apparently, it does. In my opinion, therefore, the answer to your first question is in the affirmative. As to your second question, the board is not authorized to change its minimum requirements in any year after the month of January and no change can be made to have a retroactive effect, but the board, of necessity, is required to make reasonable constructions of its rules and requirements and I think the construction suggested above, of the requirement under consideration, is reasonable. Your third question assumes that the board's ruling requires forty-two months of elapsed time between matriculation and graduation. I have come to a different conclusion, as already expressed, in construing this rule, and for that reason, the question can not be categorically answered in harmony with the answer to your first question. I do not think the requirement of forty-two months of elapsed time between matriculation and graduation is a mandatory requirement of the Board when the requirement under consideration is properly construed, and I doubt whether the requirement would be valid if it were to be construed as mandatory.

In my opinion, if the applicant is a graduate of the Rush Medical College and, as stated by you, it is a recognized in-

stitution within the meaning of the law, the fact that less than forty-two months elapsed between matriculation and graduation would not in and of itself standing alone, prevent the Board from issuing a certificate for a license to said applicant.

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**HEALTH, STATE BOARD OF: Public nuisances—penalty and removal.**

July 27, 1933.

Division of Public Health,  
Housing and Industrial Hygiene,  
State House Annex,  
Indianapolis, Indiana.  
Attention: Mr. Fred K. Myles, Director.

Dear Sir:

In reply to your inquiry relative to public nuisances:  
Section 2647 B. R. S. 1926, provides:

“Whoever causes or suffers any offal, filth, or noisome substance to be collected or to remain in any place to the damage, prejudice, or discomfort of others or the public.” \* \* \* “shall on conviction be fined not less than ten dollars nor more than five hundred.”

The above section is part of the criminal code referring to criminal offenses contrary to public health.

Section 2351 B. R. S. 1926, provides as follows:

*Abatement of nuisance.* “After any person shall have been convicted of erecting, continuing, or maintaining any public nuisance, the court may make it a part of the judgment that such nuisance be removed by the proper officer.”

Section 11832 B. R. S. 1926, provides as follows (referring to prosecutor):

“Such prosecuting attorneys within their respective jurisdictions, shall prosecute all prosecutions for felonies and misdemeanors.”

Section 1, chapter 140 of the Acts of 1933, provides:

“Prosecuting attorneys and their deputies shall receive for their services the compensation provided in