

"Question 1. Can the Board rule that an applicant for reinstatement of a license must pay a penalty as a prerequisite for the reinstatement of a license after it has been suspended for nonpayment of annual renewal fees?

"Question 2. Can the Board rule that as a prerequisite for the reinstatement of a license suspended for nonpayment of annual renewal fees the applicant must pay the annual fees for all years during which his license has been suspended?

"Question 3. Can the Board if it deems necessary require the applicant for reinstatement of a license suspended for nonpayment of annual renewal fees to take an examination to enable the Board to consider whether or not the applicant should be considered as eligible for reinstatement?"

In Corzelius v. Railroad Commission, 182 S.W.2d 412, 415 (Tex. Civ. App. 1944), it is stated:

"The general rule is well settled that boards or commissions which are creatures of the statutes, can exercise only such authority as is conferred upon them by law in clear and express language and that authority will not be construed as being conferred by implication." (Emphasis added.)

Section 8 of Article 4512b, V.C.S. (Chiropractic Act) provides in part:

"It shall be unlawful for any person who shall be licensed for the practice of chiropractic by the Texas Board of Chiropractic Examiners as created by this Act, unless such person be registered as such practitioner with the Texas Board of Chiropractic Examiners on or before the first day of January, A. D. 1950, or thereafter registered in like manner annually as provided by this Act on or before the first

day of January of each succeeding year, to practice chiropractic in this State. Each person so licensed and registered shall be deemed to have complied with the requirements and prerequisites of the laws governing the practice of chiropractic in this State. Each person so registered with the Texas Board of Chiropractic Examiners shall pay in connection with each annual registration and for the receipt hereinafter provided for, a fee to be fixed by the Texas Board of Chiropractic Examiners not to exceed Fifteen Dollars (\$15), which fee shall accompany the application of every such person for registration. Such payment shall be made to the Texas Board of Chiropractic Examiners. Every person so registered shall file with said Board a written application for annual registration, setting forth his full name, his age, post-office address, his place of residence, the county or counties in which his certificate entitling him to practice chiropractic has been registered, and the place or places where he is engaged in the practice of chiropractic, as well as the college of chiropractic from which he graduated, and the number and date of his license certificate.

"Upon receipt of such application, accompanied by the registration fee, the Texas Board of Chiropractic Examiners, after ascertaining either from the records of the Board or from other sources deemed by it to be reliable, that the applicant is a licensed practitioner of chiropractic in this State, shall issue to the applicant an annual registration receipt certifying that the applicant has filed such application and has paid the registration fee mentioned for the year in question; . . ."

Section 14 of the Act provides in part as follows:

"The Texas Board of Chiropractic Examiners shall have the authority to revoke, cancel, or suspend the license of any person

. . . for any of the following reasons:

"1. For failure to comply with, or the violation of, any of the provisions of this Act; . . ."

At the outset we think it important to point out the distinction between the suspension of a license by the Board under Section 14 and the automatic cessation of a licensee's right to engage in the practice of chiropractic in this State because of his failure to pay the annual registration fee under Section 8. We do not interpret Section 8 as requiring a licensee who is not presently engaging in the practice of chiropractic in this State to pay the registration fee in order to keep his license in good standing. This section merely makes it unlawful for a licensee to practice in Texas unless he has registered and paid the registration fee for the current year. If he is not engaging in the practice of chiropractic in this State, he is not required to maintain current registrations, and he has not violated or failed to comply with the provisions of the act by failing to register during that period. Consequently, there has been no occasion by such fact alone for the Board to suspend his license; rather, he has simply failed to meet a condition precedent to his right to engage in the practice for that year.

We find nothing in the Chiropractic Act which would prevent a licensee who has discontinued his practice in this State from resuming practice at a later date without payment of registration fees for prior years. The only thing that can be required of him is registration and payment of the fee for the then current year.

However, if a licensee engages in the practice of chiropractic in this State without being currently registered, then he has violated the provision of Section 8 making such practice unlawful, and the Board would have authority to cancel, revoke, or suspend his license under Section 14 "for failure to comply with, or the violation of, any of the provisions of this Act."

As to a licensee whose license has been suspended for practicing chiropractic without having registered and paid the required fee, the answer

is obscured by the fact that the Chiropractic Act is silent with regard to the rights of the licensee or the powers of the Board in the reinstatement of a license after suspension. However, we are of the opinion that the Board does not have authority to assess a penalty or a reinstatement fee. Fees and penalties may be assessed only when they are provided by law. McCalla v. City of Rockdale, 112 Tex. 209, 246 S.W. 654 (1922); Nueces County v. Currington, 139 Tex. 297, 162 S.W.2d 687 (1942); Helm v. Wells Fargo & Co. Express, 177 S.W. 134 (Tex. Civ. App. 1915). There is no provision of the Chiropractic Act authorizing the Board to assess a penalty or reinstatement fee upon reinstatement of a suspended license.

Similarly, it is our opinion that the Board may not require the payment of fees for past years as a condition to reinstatement. The possible consequences of practicing without registration are found in the provisions authorizing revocation, suspension, and nonissuance of licenses, injunction, and criminal prosecution. However, there is no provision in the act authorizing the collection of past fees as a condition to reinstatement of a suspended license.

Neither is there a provision in the Chiropractic Act authorizing the Board to require a person whose license has been suspended to take an examination before his license is reinstated. While we do not think there is any question as to its power to reinstate a suspended license, the Board in restoring the privileges which the license confers may not attach conditions or requirements not set out in the statute. Some of the licensing statutes of this State do grant the administering board authority to require re-examination and payment of past registration fees upon reinstatement of a suspended license. However, the powers of the Board of Chiropractic Examiners must necessarily be found in the provisions of the Chiropractic Act. Since that statute does not grant these powers to the Board, it is lacking in authority to exercise them.

Unless statutory provisions call for a different construction, suspension of a license ordinarily connotes a temporary withholding of the privileges attaching thereto, while a cancellation or revocation connotes a complete nullification or

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destruction of the basis for the privileges. We are not here expressing an opinion on the authority of the Board to reinstate licenses which have been cancelled or revoked or to require an examination as a condition to reinstatement in those cases.

SUMMARY

The Board of Chiropractic Examiners is not authorized under existing laws to assess a penalty or reinstatement fee or to require the payment of registration fees for past years as a prerequisite to reinstatement of a license which has been suspended for nonpayment of annual registration fees. Neither does the present law authorize the Board to require an applicant for reinstatement of a suspended license to take an examination before reinstatement.

Yours very truly,

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