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Texas House of Representatives
District 37

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Opinion Committee

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October 20, 1997

General Dan Morales
The Attorney General of Texas
Supreme Court Building
P.O. Box 12548
Austin, TX 78711-2548

RQ-1042

FILE # ML-39953-97
I.D. # 39953

RE: *Construction of Section 3.05(c), The Medical Practice Act of Texas*

Dear General Morales:

This letter is sent for an Attorney General's Opinion concerning the construction and application of section 3.05(c) of the Medical Practice Act, Tex. Rev. Civ. Stat. Ann. art. 4495(b), (West Supp. 1997) ("the Act") by the Texas State Board of Medical Examiners. To be eligible for a Texas license, any applicant must have passed an approved national examination within (3) attempts. The board apparently does not believe it can make exceptions for physicians who otherwise meet all other conditions for a license.

Every physician is required to pass a national examination for medical licensure in the United States. An initial license to practice medicine is then granted by an individual state medical licensing authority.

Section 3.03 of the Act covers reciprocal agreements with physicians who are licensees of other states or Canada with requirements substantially equivalent to those established in Texas. Sec. 3.03 (a), Act. Subsection 3.03.(b) (4) states that an applicant must submit "evidence of a passing grade on an examination required by the board." The section has no requirement that the applicant must have passed his or her national examination within three attempts or is ineligible, although the board may require applicants to comply with other requirements in addition to those specifically prescribed by the Act that it considers appropriate. See Sec. 3.03 (g), Act.

Section 3.05 of the Act contains specific provision relating to examinations. The section does not clearly apply to physicians who have taken and passed the national exam and who are already licensed to practice medicine. Instead its language appears to exempt them: "all applicants for license to practice medicine in this state not otherwise licensed under the



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provisions of the law must successfully pass a uniform examination approved by the board...", Sec. 3.05 (c), Act. It seems reasonable to conclude from reading section 3.05 that it is intended to cover only physicians taking the national exam in order to become licensed.

Section 3.05 (c) states if an applicant fails to pass the required examination on the first attempt that he or she "shall be permitted to take a subsequent examination not more than two times." According to research, prior to September 1, 1993, neither this subsection nor the Act itself limited the number of times an examination could be taken by an applicant. The board, however, applies the subsection to reciprocal licensure applicants who are then declared ineligible for licensure if they have taken any step of the national examination more than three (3) times before passing. The only remedy offered to reciprocal applicants who have failed after three attempts is to retake the test for medical licensure in the United States--USMLE Steps 1, 2, and 3. A physician choosing to pursue such a "remedy" faces at least a year and a half process given the scheduling of the exam parts.

Several concerns have lead to this request for an opinion. As earlier stated, it does not appear after reviewing section 3.05 that the legislature intended for it to apply to a physician seeking licensure by reciprocal agreement. My thoughts about this matter have already been set out in preceding paragraphs.

Second, even if section 3.05 (c) is applicable to reciprocal applicants, it does not seem reasonable to declare physicians who have been licensed based on exams taken and passed prior to the Act's amendment in 1993 ineligible for a Texas license. Such physicians have already been granted licenses by other states, sometimes multiple states, which have substantially the same standards as Texas. Many have become board certified, and recertified, in specialties, and still they are ineligible for Texas licenses.

I realize that the board has broad discretion in granting Texas medical licenses and that a reciprocal applicant does not necessarily have a "vested right" to a license. However, if a "right" is defined as a well-founded claim, then a more reasonable interpretation of the Act as applied to reciprocal physician would be allow him or her compliance with the specific provisions of Section 3.03, but also the ability to provide the same level of competence as other physicians licensed in Texas. Statutes are generally held to operate prospectively. It is hard to imagine a rational basis for retroactively applying a restriction passed in 1993 to exclude a licensed physician in good standing solely on the basis of exams taken and passed prior to September 1993.



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A hospital in my area is anxious to employ a well-qualified physician who has been declared ineligible because of having many years ago failed to pass a step of the national exam within three attempts. Any help you can give will be much appreciated.

Sincerely,

A handwritten signature in cursive script that reads "René O. Oliveira".

Rene O. Oliveira
State Representative
District 37