



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hon. H.G. Towle, Opt. D.
State Board of Examiners in Optometry
Austin, Texas

Dear Mr. Towle:

Opinion No. O-993

Re: Power of the State Board of Examiners
in Optometry to reject applicants for
examination on the ground of misrepresentations made to the Board.

We are in receipt of your letter of June 14th, requesting an opinion of this department, regarding the authority of the State Board of Examiners of Optometry to refuse an applicant for examination on the ground of said applicant having heretofore misrepresented facts to the Board, and in other respects failing to meet the statutory requirements of an applicant.

We refer you to article 4559 of the Revised Civil Statutes of Texas, 1925, which reads as follows:

"Each applicant shall be given due notice of the date and place of examination. All examinations shall be conducted in writing and by such other means as the board shall determine adequate to ascertain the qualifications of applicants, and in such manner as shall be entirely fair and impartial to all individuals and every recognized school of optometry. All applicants examined at the same time shall be given identical questions. The board may refuse to admit persons to its examination or to issue licenses for any of the following reasons:

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"1. The presentation to the board of any untrue statement or any document or testimony which was illegally or fraudulently obtained, or when fraud or deceit has been practiced in passing the examination.

"2. Conviction of a felony, or of a misdemeanor which involves moral turpitude.

"3. Other grossly unprofessional or dishonorable conduct of a character likely to deceive or defraud the public, or for habits of intemperance or drug addiction. Any applicant who may be refused an examination or a license, after legal notice and a full and impartial hearing, shall have his right of action to have such issue tried in the district court of any county in which one of the members of the board shall reside."

As we interpret this statute, the board may by fair and reasonable exercise of discretion, make findings regarding the qualifications of the applicant. It is stated in your inquiry that the board has found the applicant has heretofore misrepresented facts regarding his prior experience and training. The board has further found from its observation of the applicant, that by reason of said untrue statements and other conduct, he has been guilty of grossly unprofessional or dishonest conduct of a character likely to deceive or defraud the public.

The findings of your board are presumptively correct according to the principle obtaining in respect to administrative boards generally.

See *Shuppe v. Railroad Commission* 123 Tex. 521, 73 S.W. (2d) 505.

It is our opinion, therefore, that your board may refuse to admit a person to its examination or to issue a license to such person in the face of

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findings on the part of the board as to previous un-true statements and unprofessional or dishonorable conduct of a character likely to deceive or defraud the public.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Hugh Q. Buck*
Hugh Q. Buck
Assistant

HQB:omb

APPROVED JUN 22, 1939

George B. Mann
ATTORNEY GENERAL OF TEXAS

