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OPINION COMMITTEE

# Texas State Board of Medical Examiners

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**RQ-0248-6A**  
VIA FACSIMILE AND INTERAGENCY MAIL

July 13, 2004

Nancy Fuller  
Chair, Opinion Committee  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

FILE # MI-43818-04  
I.D. # 43818

RE: Eligibility for Medical Licensure

Dear Ms. Fuller:

At the Texas State Board of Medical Examiner's June 3-4, 2004 meeting, an applicant for licensure appeared before the Board's licensure committee. The committee determined the applicant ineligible for licensure based on his failure to demonstrate compliance with Texas Occ. Code Section 155.051 of the Medical Practice Act. The licensure applicant is appealing the Board's determination and has also requested that the issue be reviewed by the Attorney General's office. The Board therefore respectfully asks the Office of the Attorney General to render an opinion on this question of statutory interpretation.

## Statutory Law

All applicants for full licensure must meet the statutory requirements set out in Chapter 155 of the Medical Practice Act. These requirements pertain to education, examinations, and character. The issue relating to this Attorney General opinion request pertains to examinations only, specifically the language of Sections 155.051 and 155.056 of the Act.

## Time Period to Pass All Licensure Exams

Section 155.051 sets out the general requirements relating to licensure examinations and reads as follows:

(a) Except as provided by Subsection (b), an applicant for a license to practice medicine in this state must pass each part of an examination described by Section 155.051(2), (3), (4), (6), or (7) within seven years.

(b) An applicant who is a graduate of a program designed to lead to both a doctor of philosophy degree and a doctor of medicine degree or doctor of osteopathy degree must pass each part of an examination described by Section 155.051(2), (3), (4), (6), or (7) not later than the second anniversary of the date the applicant was awarded a doctor of medicine degree or doctor of osteopathy degree.

As provided for in §155.051(a), applicants must pass all parts of an acceptable licensure examination sequence within a seven-year period. An exception is found under §155.051(b) for those applicants who are graduates of MD/Ph.D. or DO/Ph.D. programs. Due to the nature of the programs, in that they take longer than the normal four years required by medical schools and sometimes delay the readiness of applicants to take the exams, the Legislature created an exception. The exception provides that applicants who have completed such programs need not pass all examination parts within a seven year period, but merely that they pass all parts within two years of graduating from the program.

Number of Exam Attempts Allowed

Section 155.056 of the Act sets out the general requirements for the number of attempts allowed on all parts of a licensure examination. A specific exception to the required number of attempts is provided for those applicants who demonstrate additional training and board certification. The exact statutory language provides:

(a) An applicant must pass each part of an examination within three attempts, except that an applicant who has passed all but one part of an examination within three attempts may take the remaining part of the examination one additional time.

(b) Notwithstanding Subsection (a), an applicant is considered to have satisfied the requirements of this section if the applicant:

(1) passed all but one part of an examination approved by the board within three attempts and passed the remaining part of the examination within five attempts;

(2) is specialty board certified by a specialty board that:

(A) is a member of the American Board of Medical Specialties; or

(B) is approved by the American Osteopathic Association; and

(3) completed in this state an additional two years of postgraduate medical training approved by the board.

The Board has always interpreted Sections 155.051 and 155.056 independently. Section 155.051 relates to length of time allowed to pass all parts of a licensure examination sequence, and Section 155.056 relates to the number of attempts permitted on each part of licensure examination. Exceptions are found under each section, but the Board contends that the exceptions are not interchangeable. There is no limit set by the Board on the number of times an exam may be taken in any given year, the testing service provider at which the tests are offered sets that.

### Applicable Facts

With regard to this particular case, the facts are as follows. The USMLE is a nationally offered licensure examination accepted by the Board for licensure. The applicant at issue passed the first part of the USMLE on September 21, 1993, and the third and final part on May 3, 2002. Since it took the applicant nearly nine years to pass all steps of the USMLE, the applicant did not meet the requirements under §155.051(a), that requires all steps to be passed within seven years, and the applicant was therefore required to show evidence of compliance with §155.051(b).

The licensure applicant received a Doctor of Medicine degree on May 22, 1999 and a Doctor of Philosophy degree on May 15, 1999. As stated above, the applicant passed the third and final step of the USMLE on May 3, 2002. Tex. Occ. Code §155.051(b) requires applicants who are graduates of MD/PhD programs to complete all licensure examinations within the second anniversary of the date the applicants were awarded their medical or osteopathic degree. In accordance with statute, the applicant was therefore required to pass all licensure examinations by May 22, 2001 in order to be determined eligible for licensure. Based on §155.051(b), the committee determined the applicant ineligible for licensure due to the applicant's failure to demonstrate compliance with statutory provision.

The applicant argues that the exception found under §155.056 of the Medical Practice Act should also apply to this given situation and that by the language of that section, he should be determined eligible for licensure. Under the applicant's line of reasoning, since the applicant passed all parts of the licensure examination within three attempts, is board certified and completed an additional two years of postgraduate training in Texas, the applicant should be determined eligible for licensure. By implication, the applicant is arguing that §155.051 should not apply to his application for licensure.

It is the Board's contention that §155.056(b) must be read narrowly and interpreted in conjunction with subsection (a) of the same section that requires passage of all parts of a licensing exam within three attempts except for one part of the exam. Subsection (b) provides an exception to only subsection (a) on allowable number exam attempts and not to all provisions relating to licensure.

The Board believes that when the Legislature enacted §155.056(b) it was intended to create a very limited exception. If the Legislature had intended otherwise, they would have placed all exceptions to the examination requirement under §155.051 or would have used broader language in §155.056. To determine otherwise would go against the plain meaning of the statutory language.

Thank you for your assistance on this issue and the Board looks forward to receiving your decision. If I can provide further information please do not hesitate to call me (512) 305-7073.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer S. Kaufman". The signature is fluid and cursive, with the first name "Jennifer" and last name "Kaufman" clearly distinguishable.

Jennifer S. Kaufman  
Assistant General Counsel

cc: Sam V. Stone, Esq.  
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