

[6,7] This question must be answered in the negative. (a) The grant deed was properly introduced to show the title conveyed to plaintiff by Mr. Watson; and (b) in view of the fact that defendant had set up the statute of limitations (section 336(1), Code of Civil Procedure) as a defense, the other documents tending to show plaintiff's *seisin* of the property within the five year period prior to the commencement of the action were properly received in evidence.

The judgment is affirmed.

SHINN, Acting P. J., and WOOD, J., concur.



37 Cal.App.2d 98

HUNT et al. v. STATE BOARD OF CHIROPRACTIC EXAMINERS et al.
Civ. 13691.

District Court of Appeal, First District,
Division 2, California.

Aug. 4, 1948.

Hearing Denied Sept. 30, 1948.

1. Mandamus ⇐12

Mandate is not a writ of right to be freely issued whenever a court disagrees with the policy of the administrative action, but it is limited by statute to the compelling of performance of that act which the law specially enjoins, as a duty. Code Civ.Proc. § 1085 et seq.

2. Mandamus ⇐72

When a statute imposes upon an administrative body discretion to act under certain circumstances, mandate will not lie to compel the exercise of such discretion in any particular manner. Code Civ.Proc. § 1085 et seq.

3. Mandamus ⇐63

Where an administrative board has acted capriciously or arbitrarily, mandate will issue to compel board to perform act required by statute. Code Civ.Proc. § 1085 et seq.

4. Physicians and surgeons ⇐4

Statute providing that an applicant for admission to practice as a chiropractor shall be a graduate of school teaching a course of not less than 2,400 hours in specified subjects, and authorizing adoption of rules and regulations proper and necessary to performance of duties of board of chiropractic examiners, was intended to permit board to take cognizance of changing conditions and improvements in healing arts so as to provide more efficient treatment of the sick. Gen.Laws, Act 4811, §§ 4(b, e), 5.

5. Physicians and surgeons ⇐4

Under statute providing that an applicant for admission to practice as a chiropractor shall be a graduate from school teaching a course of not less than 2,400 hours in specified subjects and authorizing adoption of rules and regulations proper and necessary to performance of duties of board of chiropractic examiners, board could raise the educational requirements for admission to practice so as to require applicants to have attended chiropractic school 4,000 academic hours. Gen.Laws, Act 4811, §§ 4(b, e), 5.

6. Physicians and surgeons ⇐4

State board of chiropractic examiners had power to adopt rule applicable to all those seeking license to practice as chiropractors requiring 50 per cent. vision and hearing, and no major physical defects. Gen.Laws, Act 4811, § 4(b, e).

7. Physicians and surgeons ⇐4

Rule adopted by state board of chiropractic examiners requiring applicants for admission to practice as chiropractors to have 50 per cent. vision and hearing, and no major physical defects, is not unreasonable, arbitrary, or capricious. Gen.Laws, Act 4811, § 4(b, e).

Appeal from Superior Court, City and County of San Francisco; Lile T. Jacks, Judge.

Action by Ratledge System of Chiropractic Schools, a corporation against State Board of Chiropractic Examiners and others, for declaratory relief concerning rules

of board relating to required study and education, consolidated with actions in mandate, and injunction, by Marjorie Frances Hunt, Joseph Albert Clark, Kenneth C. D. Scott, and Ray Penix, against same defendant. From judgments for plaintiff in each case, defendant appeals.

Judgments reversed.

Fred N. Howser, Atty. Gen., and J. Albert Hutchinson and Leo T. Englert, Deputy Attys. Gen., for appellant.

Frank V. Kington, of Redwood City, for respondent.

NOURSE, Presiding Justice.

Three actions in mandate, one in injunction, and one in declaratory relief were consolidated for trial. All involved the question of the power of the defendant board to adopt rules governing the examination and licensing of chiropractors. Three of the plaintiffs sought mandate to admit them to examination though they had not completed the hours of study required by the rules of the board. One sought an injunction against enforcement of a rule requiring fifty percent vision and hearing. The Ratledge School sought declaratory relief attacking the rules of the board relating to required study and education. Plaintiffs had judgment in each case. The only question requiring consideration on defendants' appeal is whether the board has power to enact rules imposing requirements and restrictions on applicants for license above or in excess of those enumerated in the initiative act.

The chiropractic board was created by initiative act, approved November 7, 1922 (Bus. & Prof.Code, Appendix p. 849; Deering's Gen.Laws, Act 4811). Section 4(b) and (e) read: "To adopt from time to time such rules and regulations as the board may deem proper and necessary for the performance of its work, copies of such rules and regulations to be filed with the Secretary of State for public inspection. * * * To do any and all things necessary or incidental to the exercise of the powers and duties herein granted or imposed." Section 5 provides that an applicant shall be a graduate of an incorporated chiropractic school which teaches a

course of "not less" than two thousand four hundred hours in specified subjects. The requirement is declared to be a "schedule of minimum educational requirements" (sec. 5).

In conformity with the provisions of section 4 above noted, the board adopted on February 12, 1944, the rule¹, which provides in part: "(a) The required number of academic hours of attendance in any Chiropractic School or College in the State of California will be four thousand (4000) for all students matriculating after March 1, 1944." At the same time the rule² was adopted reading as follows: "(c) All students shall have at least fifty (50) per cent vision and hearing, and no major physical defects."

Directed to the three plaintiffs who sought mandate to admit them to licensure examinations and to the school seeking declaratory relief the issue is whether the provisions of the act fixing minimum educational requirements exclude the right of the board under its rule making power to demand additional and higher educational standards.

[1-3] Before we answer the question propounded it is well to look at the elementary rules governing mandate. This is not a writ of right to be freely issued whenever a court disagrees with the policy of the administrative action. It is limited by the Code of Civil Procedure (secs. 1085 et seq.) "to compel the performance of an act which the law specially enjoins, as a duty * * *." It is settled law that when a statute imposes upon an administrative body discretion to act under certain circumstances mandate will not lie to compel the exercise of such discretion in a particular manner. 16 Cal.Jur. p. 809, 817. Hence, if the chiropractic board has power under the statute to raise the educational requirements for admission to practice, the advisability or wisdom of the board's regulations is not a matter to be controlled by the courts. What may be deemed a qualification of this statement is the rule which is applied when the administrative board has acted capriciously or arbitrarily. Then mandate will issue to compel the board to perform the act which the statute requires. But

¹ 16 Cal. Adm. Code 322(f).

² 16 Cal. Adm. Code 322(h).

these side issues are not applicable here and cases of that nature cited in the briefs have no bearing since the facts of these proceedings do not bring them within the scope of the rules. Here the single controlling issue is whether the appellant board had the power under the statute to enact and enforce the rules complained of.

The statute prescribes a schedule of "minimum" educational requirements prerequisite to examination for license to practice covering 2400 academic hours. This was enacted in 1922. The appellant board, in 1944, by rule increased the required number of academic hours to 4000. It is hardly necessary to allude to the great number of changes and improvements that have been made in the healing arts during this period of twenty-two years. It can not be argued that the appellant board acted arbitrarily or unreasonably in demanding this additional education. To the contrary, it would be more reasonable to say that it would have been deficient in its duties as an agency concerned with the public health and welfare if it had neglected to so act.

[4, 5] It is a fair and reasonable interpretation of the statute that it was intended to permit the board to take cognizance of these conditions so as to provide more efficient treatment of the sick, and that it was with such purpose in view that the statute fixed the "minimum" requirements and gave to the board the power to enact rules "proper and necessary for the performance of its work." If this is not a proper interpretation of the statute, then we can see no reason for the use of the word "minimum" in section 5. Respondents' argument that the statute was enacted to relieve the chiropractors from the unreasonable control of the medical board does not explain the use of the word "minimum." If the purpose was to fix a schedule of educational requirements which no board or agency could exceed then the proper word would have been "maximum." But in fixing a "minimum" schedule the meaning expressed in the clear language of the statute is that "at least" such hours of in-

struction were required and thus it was left open to the board to require additional instruction either in the same subjects of study specified in the statute or in new or additional subjects as the board might determine. For these reasons the judgments in the four causes which were based on the additional educational requirements cannot be sustained.

[6, 7] The appeal from the judgment in favor of Ray Penix presents no legal difficulties. On February 12, 1944, the board adopted the rule² reading: "All students shall have at least fifty (50) per cent vision and hearing, and no major physical defects." The judgment declares the rule unenforceable. The respondent defends the judgment on the ground that the board was without power to adopt the rule and argues that the question of the reasonableness of the rule is not open to discussion. With this we do not agree. The question of power is answered in what we have said heretofore. Since the rule is applicable to all those seeking license to practice it is clearly within the powers of the board. No provision of the statute fixes physical qualifications. The rule is therefore not in conflict with the statute, and the only question debatable is whether it is unreasonable, arbitrary or capricious. The effect of respondent's argument is that the board is without power to deny a license to one who is totally blind, deaf, or without arms or hands, or to one who is confined in a state penitentiary or mental institution. The unreasonableness of this possibility negatives the contention that the statute does not authorize the appellants to forestall the absurdities by appropriate rules and regulations. The respondent does not contend that the application of the rule to his case was unreasonable or improper on any other ground.

The judgments in each of the five consolidated actions are reversed.

GOODELL and DOOLING, JJ., concur.

Hearing denied; CARTER, J., dissenting.

² 16 Cal. Adm. Code 322(h).