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Order.

ORDER.

Filed April 4, 1934.

New Jersey Supreme Court

FRANK S. COOPER,

Relator,

vs.

STATE BOARD OF VETERINARY
MEDICAL EXAMINERS OF THE
STATE OF NEW JERSEY,

Respondent.

*On
Mandamus.
Order.*

10

Application having been made to this Court
by rule to show cause why an alternative or
peremptory writ of mandamus should not
be allowed in the above entitled cause com-
manding the respondent to issue to the Re-
lator its license to practice the profession of
Veterinary Medicine, Surgery and Dentistry in
the State of New Jersey, and said rule to show
cause having come on for argument before the
undersigned Justice of the Supreme Court, at the
Court House, in the City of Newark, on March
10, 1934, in the presence of Lionel P. Kristeller,
Attorney of Relator, and the Attorney General
of the State of New Jersey, by Robert Peacock,
Attorney for the Respondent, and the under-
signed being of the opinion that this matter
presents sufficient questions to have the same
reviewed by the Supreme Court *en banc*, it is on
this second day of April, 1934,

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ORDERED that an alternative writ of mandamus
be allowed in the above entitled cause, returnable

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Order.

- before the Supreme Court *en banc*, pursuant to the statute in such case made and provided and in accordance with the rules and practices of this Court, as the basis for a return and a record leading to a judgment subject to review, and that the said record so made be based upon the facts
 10 appearing on the record now before this Court, and that the said State Board of Veterinary Medical Examiners of the State of New Jersey shall make return thereto with all convenient speed.

Let the foregoing rule be entered in the minutes.

CHARLES W. PARKER,
J. S. C.

- 20 On motion of

LIONEL P. KRISTELLER,
 Attorney of Relator.

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*Alternative Writ of Mandamus.***ALTERNATIVE WRIT OF MANDAMUS.**

STATE OF NEW JERSEY, ss.

To The State Board of Veterinary
Medical Examiners of the State of
(SEAL) New Jersey;

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GREETING:

WHEREAS, Frank S. Cooper applied to
The State Board of Veterinary Medical Exam-
iners of the State of New Jersey, for a license
to practice the profession of Veterinary medicine,
surgery and dentistry in the State of New Jersey,
and

WHEREAS it is represented to us that the said
State Board of Veterinary Medical Examiners
has refused to issue said license upon the sole
ground that the said petitioner is not a graduate
of a recognized veterinary college; and

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WHEREAS it is charged and insisted before us
that Frank S. Cooper has in all respects complied
with the statutes of New Jersey in such case
made and provided and is entitled to a license,
and that the refusal of said State Board of Vet-
erinary Medical Examiners is illegal, unwar-
ranted, arbitrary and without force of law;

Now, THEREFORE, we being willing that due and
speedy justice should be done in this behalf,

30

COMMAND AND STRICTLY ENJOIN you that im-
mediately after the receipt of this writ, you do
issue to the said Frank S. Cooper a license to
practice Veterinary medicine, surgery and den-
tistry in the State of New Jersey, or cause to us
to the contrary thereof signify, lest in your de-
fault complaint should come to us repeated; and
how you shall execute this, our command, signify
to our Justices of our Supreme Court of Judica-

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Alternative Writ of Mandamus.

ture, at Trenton, upon the 1st day of May, Nineteen Hundred and Thirty-four next, together with this, our writ; and this in no wise omit, at your peril.

10 WITNESS, HON. THOMAS J. BROGAN, Chief Justice of our Supreme Court, at Trenton, this 4th day of April, Nineteen Hundred and Thirty-four.

FRED L. BLOODGOOD,
Clerk.

On motion of

LIONEL P. KRISTELLER,
Attorney of Petitioner.

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*Stipulation of Facts.***STIPULATION OF FACTS.**

The parties hereto, the relator by his undersigned attorney, and the respondent by the Attorney General of the State of New Jersey, do hereby stipulate and agree that the following facts shall constitute a special case agreed upon by the parties hereto to be argued and submitted to the New Jersey Supreme Court. 10

The facts agreed upon, are:

1. Frank S. Cooper resides at 490 Hawthorne avenue, Newark, New Jersey.

2. Prior to January 23, 1902, he was engaged in the practice of Veterinary medicine, surgery and dentistry in the State of Indiana.

3. On January 23, 1902, pursuant to the acts of the Legislature of the State of Indiana, he registered with the County Clerk of Tippecanoe County and received a certificate from said Clerk entitling him to practice Veterinary medicine, or surgery, or any branch thereof, in the State of Indiana, a photostatic copy of which said certificate is annexed hereto, made part hereof and marked "Exhibit R. 1." 20

4. Frank S. Cooper practiced his profession actively and continuously thereafter in the State of Indiana until about August, 1931. 30

5. During the year 1911, the Legislature of the State of Indiana amended its Veterinary Practice Act so that from and after 1911 all veterinarians duly licensed in the State of Indiana, were required to register and re-register for two-year periods, and all persons theretofore practicing as veterinarians for a period of eight years 40

Stipulation of Facts.

prior to 1911 were without further examination duly licensed under said amended statute.

10 6. Frank S. Cooper, pursuant to the statute aforesaid, applied to the Veterinary Examining Board of the State of Indiana, pursuant to the statute of 1911 and received from said examining board, License #27, to practice his profession in said State.

20 7. Frank S. Cooper, pursuant to said statute, registered and re-registered for two-year periods thereafter and now holds registration certificate #677, indicating that his license number is #27, and the expiration date of said certificate is July 15, 1935, a photostatic copy of which said certificate is annexed hereto, made part hereof and marked "Exhibit R. 2."

8. Said license and registration certificate are now in full force and effect and are in all respects valid.

30 9. Frank S. Cooper, in June, 1932, made application to the State Board of Veterinary Medical Examiners of the State of New Jersey pursuant to the Act aforesaid, paid a fee of Ten Dollars (\$10.00) to the Examining Board of this State, and filed in the office of said Board, a copy of his Indiana license certified by the affidavit of the Secretary of the Veterinary Examining Board of the State of Indiana showing, that the relator was duly licensed to practice his profession in the State of Indiana at the time of his making his application in the State of New Jersey, and said affidavit further certified that the standard of the examination and other requirements adopted by the Veterinary Examining Board of Indiana is substantially the same as

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Stipulation of Facts.

that provided for by an act entitled, "An act to regulate the practice of veterinary medicine, surgery and dentistry in the State of New Jersey, to license veterinarians and to punish persons violating the provisions thereof," (P. L. 1902, page 36, 4 C. S. 5707) and the acts amendatory thereof and supplemental thereto.

10

10. The State Board of Veterinary Medical Examiners on June 24, 1932, took the following action on the application for license of Frank S. Cooper:

"The application of Frank S. Cooper for license without examination was then considered. Frank S. Cooper not being a graduate of a recognized veterinary college but having a certificate from the Veterinary Science Association of London, Ontario, Canada, which is a correspondence school. Mr. Cooper presented a license issued to him by the authorities of the State of Indiana in 1906, as a Non-Graduate and desired to obtain a New Jersey license without examination. It was the unanimous opinion of the Board that Mr. Cooper's qualifications did not meet with the requirements of the New Jersey Law and that he be refused a New Jersey license."

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11. That in the opinion of the State Board of Veterinary Medical Examiners of New Jersey, the regulations of the State of Indiana are not the same as the standard of requirements adopted by the Veterinary Board of the State of New Jersey.

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12. That the said Frank S. Cooper is a non-graduate licensee of Indiana and that he has never pursued the study of veterinary medicine for at least three years, including three regular courses of lectures of at least six months each

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Stipulation of Facts.

in different years in some legally incorporated veterinary college or university prior to the granting of said diploma, in accordance with section six of an act entitled, "An act to regulate the practice of veterinary medicine, surgery and dentistry in the State of New Jersey, to license veterinarians and to punish persons violating the provisions thereof," (P. L. 1902, p. 36).

10 13. That the State Board of Veterinary Medical Examiners has adopted a resolution placing certain schools for veterinary medicine on the approved list, which schools are recognized by the United States Department of Agriculture, Bureau of Animal Industry, and that the school from which the said Frank S. Cooper graduated, was a correspondence school and is not an approved school within the meaning of the afore-
20 said act, or the rules and regulations of the State Board of Veterinary Medical Examiners.

14. That the State Board of Veterinary Medical Examiners has refused to grant a license to Frank S. Cooper because his qualifications to practice veterinary medicine do not meet the requirements, in the opinion of the said Board, of the New Jersey statute concerning the practice
30 of veterinary medicine.

LIONEL P. KRISTELLER,
Attorney of Relator,

DAVID T. WILENTZ,
Attorney General of New Jersey.

Veterinarian's Certificate

STATE OF



INDIANA

In *casu* *County*

In accordance with an Act of the Legislature approved by the Governor of the State of Indiana on March 11, 1901, and the presentation of evidence of fulfillment of the requirements of said act, I hereby issue certificate to *Frank B. Cooper* to practice Veterinary Medicine, Surgery, or any branch thereof in the State of Indiana.

Witness my hand and seal of the Circuit Court of said County this *23* day of *July* 190*2*

Paul C. Moore
Lippescanon

Clerk of the Court

County, Indiana



P-1

Stipulation of Facts.

9

Exhibit R1

1902

~~N. License~~

1933

1933

Refused to issue

Stipulation of Facts.

-Exhibit R 2

1933- 1935

Registration

(Report immediately to the Secretary any change in your address)

No. 677

INDIANA VETERINARY EXAMINING BOARD

This is to certify that Frank S. Cooper

has been duly registered and is hereby authorized to practice

Veterinary Medicine and Surgery

in the State of Indiana, under provisions of laws now in force in said State.

This Certificate expires July 15, 1935, unless renewed for cause as provided for by law, and while in force must be displayed in a prominent place in the holder's office or place of business.

Given under our hands and seals in the City of Indianapolis, this 17th day of August, 1933

H. Mabel Hamilton,
D. V. M.

H. A. Sigler
D. V. M.

J. L. Asby, M. D. B.
Secretary

License No. 27

R. 2

Return to Alternative Writ of Mandamus.

**RETURN TO ALTERNATIVE WRIT
OF MANDAMUS.**

To the Honorable Justices of the Supreme Court
of New Jersey:

The respondent, State Board of Veterinary
Medical Examiners of the State of New Jersey,
to whom the said writ is directed, do herewith
make return thereto to your Honors, and assert
and certify that all the statements set forth in
said writ are not true: 10

1. Respondent has no information that on
the twenty-third day of January, A. D. 1902, re-
lator received a certificate entitling him to
practice veterinary medicine, or surgery, or any
branch thereof, in the State of Indiana, but
leaves the relator to his proof upon this point. 20

2. Respondent has no information that relator
has fully complied with all the statutory require-
ments of the State of Indiana relating to the
practice of veterinary medicine, but leaves the
relator to his proof upon this point.

3. Respondent has no information that during
the year 1911, the legislature of the State of
Indiana amended its veterinary practice act so
that from and after 1911 all veterinarians duly
licensed in the State of Indiana, were required
to register and re-register for two-year periods,
and all persons theretofore practicing as veteri-
narians for a period of eight years prior to 1911
were without further examination duly licensed
under said amended statute, and that relator
received license #27 from the said State of
Indiana, but leaves the relator to his proof upon
this point. 30

Return to Alternative Writ of Mandamus.

4. Respondent has no information that relator was duly licensed by the Veterinary Examining Board of the State of Indiana, except the facts set forth in his affidavit, and leaves the relator to his proof upon this point.

10 5. Respondent admits that applicants for license to practice veterinary medicine in Indiana are required to submit to examination, but denies that the standard of requirements of the State of Indiana is substantially the same as provided for by an act entitled, "An act to regulate the practice of veterinary medicine, surgery and dentistry in the State of New Jersey, to license veterinarians and to punish persons violating the provisions thereof," and the acts amendatory thereof and supplemental thereto.

20 6. Respondent has no information that attached to the petition is a true photostatic copy of the original license granted to relator.

30 7. Respondent admits that relator filed with the State Board of Veterinary Medical Examiners of New Jersey, an application to practice his profession in this State, together with what is alleged to be a certified copy of his Indiana license, together with an affidavit of the Secretary of the Veterinary Examining Board of the State of Indiana showing relator to be duly licensed to practice his profession in the State of Indiana. We further admit that said affidavit sets forth that the standard of requirements of the State of Indiana is substantially the same as the requirements of the State of New Jersey, but deny that the standards are the same; and that the Secretary of the Veterinary Examining Board of the State of Indiana is not qualified to pass upon the point as to whether or not the standards of the

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Return to Alternative Writ of Mandamus.

State of Indiana in regard to the practice of veterinary medicine, are the same as the standards of the State of New Jersey.

8. Respondent admits that the State Board of Veterinary Medical Examiners of New Jersey refused to grant relator a license to practice his profession in this State on the grounds that he is not eligible in that he has not graduated from a recognized college and has not had at least a three year course of study as now prescribed by the New Jersey laws. 10

9. Respondent denies that the refusal of the State Board of Veterinary Medical Examiners of New Jersey is arbitrary and unreasonable and says that said refusal is within the power of the said Board. 20

10. Respondent, further answering the said writ and petition for writ, sets forth that: The State Board of Veterinary Medical Examiners on June 24, 1932, took the following action on the application for license of Frank S. Cooper:

“The application of Frank S. Cooper for license without examination was then considered. Frank S. Cooper not being a graduate of a recognized veterinary college but having a certificate of the Veterinary Science Association of London, Ontario, Canada, which is a correspondence school. Mr. Cooper presented a license issued to him by the authorities of the State of Indiana in 1906, as a Non-Graduate and desired to obtain a New Jersey license without examination. It was the unanimous opinion of the Board that Mr. Cooper’s qualifications did not meet with the requirements of the New Jersey Law and that he be refused a New Jersey license.” 30

Return to Alternative Writ of Mandamus.

11. That in the opinion of the State Board of Veterinary Medical Examiners of New Jersey, the regulations of the State of Indiana are not the same as the standard of requirements adopted by the Veterinary Board of the State of New Jersey.

10 12. That the said Frank S. Cooper is a non-graduate licensee of Indiana and that he has never pursued the study of veterinary medicine for at least three years, including three regular courses of lectures of at least six months each in different years in some legally incorporated veterinary college or university prior to the granting of said diploma, in accordance with section six of an act entitled, "An act to regulate the practice of veterinary medicine, surgery and
20 dentistry in the State of New Jersey, to license veterinarians and to punish persons violating the provisions thereof," (P. L. 1902, p. 36).

13. That the State Board of Veterinary Medical Examiners has adopted a resolution placing certain schools for veterinary medicine on the approved list, which schools are recognized by the United States Department of Agriculture, Bureau of Animal Industry, and that the school
30 from which the said Frank S. Cooper graduated, was a correspondence school and is not an approved school within the meaning of the afore-said act, or the rules and regulations of the State Board of Veterinary Medical Examiners.

14. That the State Board of Veterinary Medical Examiners has refused to grant a license to Frank S. Cooper because his qualifications to practice veterinary medicine do not meet the requirements, in the opinion of the said Board, of

Return to Alternative Writ of Mandamus.

the New Jersey statute concerning the practice of veterinary medicine.

15. Respondent further answering said writ says that the relator in his affidavit says that he was licensed to practice as a veterinarian on the twenty-third day of January, A. D. 1902, whereas the affidavit of Frank H. Brown, Secretary of the Veterinary Examining Board of the State of Indiana sets forth that Frank S. Cooper obtained his license in Indiana in the year 1906.

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16. Respondent further says that Frank S. Cooper is not entitled to a license to practice veterinary medicine in the State of New Jersey because he has not complied with the statutory requirements of this State; that he does not have the qualifications to practice as required by the veterinary medical act of the State of New Jersey, and that he is not a graduate of a college that has been approved by the said Board; that the action of the said Board is not arbitrary and unreasonable, but said refusal to grant relator a license is discretionary with the said Board and is in accordance with the rules and regulations of the said Board and the law of this State.

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17. Respondent, further answering the said writ, denies the right of the relator to proceed by writ of mandamus and says that the said writ should be dismissed because a writ of mandamus will issue only to compel the performance in a specified manner of ministerial duties so plain in point of law, and so clear in matters of fact, that no element of discretion is left as to the precise mode of their performance; but that as to all acts or duties depending upon the jurisdiction to decide questions of law, or to ascertain matters of fact on the part of the officer or body at

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whose hands their performance is required, mandamus will not lie; and further that a writ of mandamus is not the proper remedy where the legal right of the relator is in doubt or unsettled, and the Board having already acted upon this
10 matter in accordance with the law and facts before it, has given judgment, and the only remedy of relator is by writ of certiorari to review the action of said respondent.

This return is made as by the annexed writ respondent is commanded, and respondent hereby prays that the said writ may be dismissed and that respondent may be relieved from obeying the command therein given, and that respondent may be allowed reasonable costs.

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DAVID T. WILENTZ,
Attorney General of New Jersey,
Attorney for State Board of Veterinary Medical Examiners of the
State of New Jersey.

STATE OF NEW JERSEY.

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STATE BOARD OF
VETERINARY MEDICAL EXAMINERS.

The semi-annual meeting of the New Jersey State Board of Veterinary Medical Examiners was held at the State House, Trenton, N. J., on June 24th and 25th, 1932.

All members present.

Doctor Harrison called the meeting to order and the twenty-eight applications for license were received and the candidates' credentials examined and the written examinations begun.
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Doctor Millar presented the report of the Board's finances and stated that the fifty-three dollars and eighty-three cents fund was in the closed Asbury Park & Ocean Grove Bank and that the amount which would eventually be paid was unknown.

10

Doctor Goldhaft made a motion and was seconded by Doctor Silvester that this amount be charged to the Board's expenses as of January 2nd, 1932 and that the members wait until such time as the bank makes settlement and then receive whatever may be their share. (Passed.)

The application of Frank S. Cooper for license without examination was then considered, Frank S. Cooper not being a graduate of a recognized Veterinary College but having a certificate from the Veterinary Science Association of London, Ontario, Canada, which is a correspondence school. Mr. Cooper presented a license issued to him by the authorities of the State of Indiana in 1906 as a Non-Graduate and desired to obtain a New Jersey license without examination, it was the unanimous opinion of the Board that Mr. Cooper's qualifications did not meet with the requirements of the New Jersey Law and that he be refused a New Jersey license.

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The Board then gave time to Mr. Max N. Schwartz, Counsellor at Law of Newark, N. J., who presented the petition of Wm. H. McLaughlin who wished to be licensed to practice in New Jersey. Mr. McLaughlin's case was taken under consideration and Doctor Millar was designated to interview Mr. Backes of the Attorney General's Office and secure his opinion as to what course we should follow and report at the special meeting at Atlantic City in July.

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There being no further business the meeting
was adjourned.

W. B. MAXSON,
Secretary.

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STATE OF NEW JERSEY.

STATE BOARD OF
VETERINARY MEDICAL EXAMINERS,
TRENTON, NEW JERSEY.

APPLICATION FOR LICENSE.

I hereby apply for license to practice Veter-
inary Medicine, Surgery and Dentistry in the
State of New Jersey, pursuant to the provisions
of Chapter 18, Laws of 1902, and enclose Ten
Dollars, the regular examination fee fixed by law.

20

Full Name—Frank S. Cooper

Address—490 Hawthorne Ave., Newark, N. J.

Age and place of birth—59 years, Fayette Co.,
Ohio.

Preliminary Education:

- (a) High School—Common School.
Date of Diploma.....
No. of Diploma.....
(b) College or University.....
Date of Diploma.....
No. of Diploma.....

30

Veterinary Education:

College or University—Veterinary Sci-
ence Association, London, Ontario,
Canada.

Date of Diploma—Aug. 3rd, 1905

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No. of Diploma—27

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Moral Character Certified by:

Name	Address	
John F. Dougherty	857 So. 17th St., Newark, N. J.	
Edward T. Beckford	#60 Schley St.,	10
Name—Frank S. Cooper, VS.		
P. O. Address—490 Hawthorne Ave., Newark, N. J.		

Dated.....19

Sworn to before me at the State House, Tren-
ton, New Jersey, on the..... day of
....., 19..

.....
President.

20

To the State Board of Veterinary Medical Ex-
aminers of the State of New Jersey, Trenton,
New Jersey:

Frank S. Cooper of 490 Hawthorne avenue,
Newark, New Jersey, does hereby make applica-
tion to the State Board of Veteran Medical Ex-
aminers for a license conferring upon him, the
right to practice in the State of New Jersey,
Veterinary medicine, surgery and dentistry, as
provided by the public laws of the State of New
Jersey for the year 1902, pages 37-38 and in ac-
cordance with the public laws of 1902, page 38,
does hereby tender to your Board, a certified
check to the Order of your Board, in the sum of
Ten Dollars (\$10.00) and a copy of his license
to practice Veterinary medicine and surgery in
the State of Indiana, which copy of said license
is certified to by the affidavit of Frank H. Brown,
Secretary of such board in the State of Indiana

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and also an affidavit of said secretary of the State Board, showing that the standard of examination and other requirements adopted by the State Board of Medical Examiners in the State of Indiana is substantially the same as that provided for by Chapter 18, Laws of 1902 of the State of New Jersey, and said applicant Frank S. Cooper does hereby request that a license be issued to him by the State Board of Veterinary Medical Examiners of the State of New Jersey, conferring upon him, all the rights and privileges provided by Sections 4 and 6 of the public laws of 1902 Chapter 18.

FRANK S. COOPER,
Applicant.

4/22/32

20

STATE OF INDIANA, }
COUNTY OF } ss.:

FRANK H. BROWN, being duly sworn, according to law, upon his oath, deposes and says:

I am the secretary of the Indiana Live Stock Sanitary Board, which Indiana Live Stock Sanitary Board was established by the State of Indiana, among other things, to govern the movements into and the handling within the State of Indiana of certain live stock and for the control of contagious and infectious diseases of domestic animals, and as Secretary of said board and in accordance with the law, I automatically serve as Secretary of the Veterinary Examining Board of the State of Indiana.

I hereby certify that annexed to this, my affidavit, is a true copy of a registration certificate issued by the Veterinary Examining Board of the State of Indiana to Frank S. Cooper, which

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registration certificate so issued to him is still in force and effect and has not been revoked. Furthermore, I hereby certify that Frank S. Cooper, was issued non-graduates license No. 27 without examination by the Indiana Board of Veterinary Medical Examiners in the year 1906, and said non-graduates license to practice Veterinary Medicine in Indiana so issued to him is still in force and effect and has not been revoked. 10

I do further certify that the said Veterinary Examining Board of Indiana has since 1912 required of all applicants for a license to practice Veterinary medicine in the State of Indiana to be examined in the following subjects: Surgery, Obstetrics, Pathology and Histology, Dentistry and Zootechnics, Parasitology and Bacteriology, Chemistry, Pharmacy and Botany, Physiology, Theory and Practice, Anatomy and Materia Medica and Therapeutics, but that the above were not required at the time Frank S. Cooper obtained his license in Indiana in the year 1906, and that the Veterinary Practice Act of Indiana was amended in 1911, and since the year 1912, all applicants for veterinary license in the State of Indiana have submitted to an examination in subjects pertaining to Veterinary Medicine substantially the same as required by the State Board of Veterinary Medical Examiners of the State of New Jersey, and that annexed hereto is a copy of the laws of the State of Indiana containing the laws, rules and regulations pertaining to the control of live stock disease, and I certify that the same is a true copy of such laws, rules and regulations pertaining to the control of live stock diseases in the State of Indiana. 20 30

FRANK H. BROWN,

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Sworn and subscribed to before
me, this 13th day of May,
1932.

10 NELL WHITAKER,
My Commission expires Dec. 5, 1935.

No. 698.

INDIANA
VETERINARY EXAMINING BOARD.

THIS IS TO CERTIFY THAT Dr. Frank S. Cooper
has been duly registered and is hereby authorized
to practice

20 VETERINARY MEDICINE AND SURGERY
in the State of Indiana, under provisions of laws
now in force in said State.

This Certificate expires July 15, 1933, and
unless revoked for cause as provided for by law,
and while in force must be displayed in a promi-
nent place in the holder's office or place of busi-
ness.

30 Given under our hands and seals in the City of
Indianapolis, this 6th day of August, 1931.

A. C. SPINCY, D. V. M.

(SEAL)

R. F. DEAN, D. V. M.

Frank H. Brown, Secretary.

License No. 27

Expired July 15, 1933.

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STATE LIVE STOCK SANITARY BOARD.

OFFICE OF STATE VETERINARIAN,
Room 151 State House,
Indianapolis, Ind.

August 6, 1931. 10

TO WHOM IT MAY CONCERN:

This is to certify that the records in this office show that Mr. Frank S. Cooper, at the age of thirty-four years, obtained a non-graduate's license to practice Veterinary Medicine in the State of Indiana. Our records tend to show that Mr. Frank S. Cooper obtained his license to practice in Indiana in the year 1906, having obtained the same by application through the clerk of the Court of Tippecanoe County, Indiana, after having graduated from Ontario Correspondence School in 1905. 20

The Veterinary Practice Act of Indiana was amended in 1911 and since the year 1912 all applicants for Veterinary License in the State of Indiana have submitted to an examination in subjects pertaining to Veterinary Medicine substantially the same as required by the State Board of Veterinary Medical Examiners of the State of New Jersey. 30

Very truly yours,

FRANK H. BROWN,
State Veterinarian.

Subscribed and sworn to before me this 6th day of August, 1931.

(SEAL) LUCILLE G. STEENGRAFE,
Notary Public.

My commission expires Jan. 13, 1935. 40

*Record of State Board of Veterinary Medical
Examiners.*

ZUCKER & GOLDBERG
24 Branford Place,
Newark, N. J.

June 7, 1932.

10 In Re: Frank S. Cooper
Dr. W. B. Maxson,
Flemington, New Jersey

Dear Doctor Maxson:

Enclosed please find application for license on behalf of Frank S. Cooper. Also enclosed please find check for \$10.00, the fee charged for the same.

We would appreciate your advising us of the action that the Board takes on this application.

20

Yours very truly,

ZUCKER & GOLDBERG,
By LEONARD H. GOLDBERG

June 28, 1932.

Mr. Leonard W. Goldberg,
Chamber of Commerce Bldg.,
24 Branford Place,
30 Newark, N. J.

Dear Mr. Goldberg:

The application of Frank S. Cooper was presented to the New Jersey State Board of Veterinary Medical Examiners at their regular meeting on June 24th and it was the unanimous vote of this Board that Frank S. Cooper should be denied a license to practice Veterinary Medicine in the State of New Jersey.

40 His credentials show that he is not a graduate of a recognized college or university having a

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three-year course of study as prescribed by our New Jersey Law; also that the license which he holds to practice in the State of Indiana was granted to him as a non-graduate and this Board upon advice from the Attorney General's office refuses to accept such qualifications as he presents as meeting those required by the New Jersey Law. 10

I am returning your personal check drawn to my order for the sum of ten dollars.

Very truly yours,

W. B. MAXSON,
Secretary.

810 Broad Street, 20
Newark, N. J.,
January 5, 1934.

Board of Veterinary Medical Examiners
State House,
Trenton, N. J.

Gentlemen:

Will you please advise me in the enclosed, stamped, addressed envelope as to the names and addresses of the persons composing the present Board of Examiners, and instruct me as to whom I am to communicate respecting a matter of admission to the practice. 30

Yours truly,

C:G LIONEL P. KRISTELLER.

1.

Enc.

*Record of State Board of Veterinary Medical
Examiners.*

810 Broad Street,
Newark, N. J.
January 22, 1934.

10 Dr. W. B. Maxson,
Flemington, N. J.

My dear Sir:

Will you please send me the necessary application blanks to be filed with the State Board of Veterinary Medical Examiners by an applicant, who is a registered and recognized practitioner in a sister state, who is now a resident of New Jersey, and desires to practice in this state.

Yours truly,

20 LIONEL P. KRISTELLER.

810 Broad Street,
Newark, N. J.,
January 30, 1934.

Dr. W. B. Maxson,
Flemington,
New Jersey.

30 Dear Dr. Maxson:

This will acknowledge receipt of your letter of January 27, 1934 enclosing an application for examination, and I note that you state that the next meeting of the Board will be held on June 29, 1934. I desire an application for a license by a veterinary licensed in a sister state, who does not require an examination, as under the Act, upon filing the necessary papers, the license is issued.

40

*Record of State Board of Veterinary Medical
Examiners.*

Will you not be good enough to let me hear from you, with a proper application of that type, in the enclosed, stamped, addressed envelope?

Very truly yours,

LIONEL P. KRISTELLER.

10

January 31, 1934.

Lionel Kristeller,
810 Broad Street,
Newark, N. J.

Dear Sir:

The application blank which I recently sent you is the only application which is necessary as this gives us the necessary information regarding a candidate's qualifications and at the time he would have to come before our Board and present his credentials showing not only his diplomas but also the license which he holds in another state in which the requirements for licensing are at least equal to those of New Jersey.

20

I trust this is the information which you desire. Should there be any further information which I can furnish you please do not hesitate to write me.

30

Yours truly,

W. B. MAXSON,
Secretary.

*Record of State Board of Veterinary Medical
Examiners.*

STATE OF NEW JERSEY.

STATE BOARD OF VETERINARY
MEDICAL EXAMINERS.

February 10, 1934.

10 David T. Wilentz, Attorney General
Trenton, N. J.

Dear Sir:

I am enclosing the records and the correspondence which I have had in reference to Frank S. Cooper.

He came before our Board in June, 1932 and we refused to accept his credentials as meeting the requirements of our New Jersey Law regulating practice.

20 He is not a graduate of a recognized veterinary college or university having a three-year course of study or more, since his diploma is from a correspondence school.

The license which he holds in the State of Indiana was issued to him as a NON-GRADUATE and he seems to feel that we should now accept such NON-GRADUATE license according to par. 6, Chapter 18, Laws of 1902 and issue him

30 a license without any examination.

Should you so desire I will gladly come to Trenton at any time and go over these papers with you.

Yours truly,

W. B. MAXSON,
Secretary.

*Demurrer to Return.***DEMURRER TO RETURN.**

Frank S. Cooper, the Relator, by Lionel P. Kristeller, Esq., his attorney, comes and says that the said writ should not be dismissed for that:

The return to the said writ by the said respondent and the matters set forth therein are, as the same set forth, not sufficient in law.

10

Wherefore your relator prays that a peremptory writ of mandamus do issue herein, directed to the State Board of Veterinary Medical Examiners of the State of New Jersey, in conformity with the terms of the alternative writ heretofore issued.

LIONEL P. KRISTELLER,
Attorney of Relator.

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30

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Opinion of the Supreme Court.

OPINION OF THE SUPREME COURT.

November 7, 1934.

On mandamus.

Before BROGAN, *Chief Justice* and *Justices*
10 PARKER and BODINE.

The opinion of the Court was delivered by

BROGAN, CHIEF JUSTICE. The relator holds an
alternative writ of *mandamus*; a return was
made, to which relator demurred. On the plead-
ings and issue raised the relator seeks a peremp-
tory writ to compel the New Jersey state board
of veterinary medical examiners to issue him a
veterinary license to practice such calling in this
20 state on the strength of a license issued him by
the veterinary examiners board of the State of
Indiana, which permitted him to practice as a
veterinarian in that state.

The facts have been stipulated and, briefly,
they are that the applicant is now a resident of
New Jersey; that he engaged in the practice of
veterinary medicine, &c., in the State of Indiana
prior to January 23d, 1902, on which date he re-
ceived a certificate from that state; that he prac-
30 ticed his profession in Indiana until August,
1931; that in the year 1911, the legislature of
Indiana amended its statute on veterinary prac-
tice to the effect that from and after that year
all such veterinarians, licensed in the State of
Indiana, were required to register and reregis-
ter for two-year periods and all persons prac-
ticing as veterinarians for eight years prior to
1911 were duly licensed under that statute to
practice without further examination; that the
relator came within the provisions of that statute
40

Opinion of the Supreme Court.

and received license to practice, which license continues in full force and effect and is valid in the State of Indiana.

The relator, in June, 1932, applied to the state board of veterinary medical examiners of the State of New Jersey for a license, claiming that under our statute entitled, "An act to regulate the practice of veterinary medicine, surgery and dentistry in the State of New Jersey, to license veterinarians and to punish persons violating the provisions thereof" (*Pamph. L. 1902, p. 36; 4 Comp. Stat., p. 5707*), and the acts amendatory thereof and supplemental thereto, he was entitled thereto. The New Jersey board denied him a license on the ground that his qualifications did not meet the requirements of the New Jersey statute and that he was not a graduate of a recognized veterinary college. The relator has a diploma from a correspondence school in Canada. These several matters are set out in detail in the return to the alternative writ.

Accompanying the relator's application to the New Jersey board there was an affidavit made by the secretary of the veterinary examining board of the State of Indiana, certifying that since 1912 applicants for veterinary license in Indiana are required to pass an examination in certain subjects, which are detailed, which the affiant declares are substantially the same as those subjects required by the State of New Jersey for a license "but that the above (subjects) were not required at the time Frank S. Cooper (relator) obtained his license in Indiana in 1902," &c. As to this the return admits that the affidavit of the secretary of the Indiana board alleges that the requirements of Indiana and New Jersey are substantially the same but it denies

Opinion of the Supreme Court.

that they are *in fact* the same. It further avers that the said applicant is a nongraduate licensee of Indiana and that he has not pursued the study of veterinary medicine for at least three years, including three regular courses of lectures of at least six months each, in different years, in
 10 a legally incorporated veterinary college or university prior to the granting of the diploma, as is required by the New Jersey statute; further, that the school from which the applicant was graduated is a school that is not approved within the meaning of our statute. All this is admitted by the relator.

Turning to the statute, it is apparent that section 6, upon which the applicant relies, contemplates three classes of persons. The first part
 20 of the section reads as follows:

“From and after the first Monday in May, one thousand nine hundred and two, any person not hereinbefore registered to practice veterinary medicine, surgery and dentistry in this state, or (*sic*) desiring to enter upon such practice, shall deliver to the secretary of the veterinary medical board, upon a payment of a fee of ten dollars, a written application for license,
 30 together with satisfactory proof that the applicant is more than twenty-one years of age, is of good moral character, has obtained a competent school education and has received a diploma conferring the degree of veterinary medicine from some legally incorporated veterinary college or university of the United States, or a diploma or license conferring the full right to practice all the branches of veterinary science in some foreign country (which, in the opinion of said court, was in good standing at the time of issuing said diploma) * * *.”
 40

Opinion of the Supreme Court.

For the sake of clarity, this part of section 6 will be referred to as the first provision thereof. It prescribes the conditions that must be complied with by applicants who have not, prior to its enactment, been registered to practice veterinary medicine but whose education had been completed before the statute went into effect and who seek a license. 10

The second provision of the section continues as follows:

“* * * applicants who shall have received their degree in veterinary medicine after the first Monday of May, one thousand nine hundred and two, must have pursued the study of veterinary medicine for at least three years including three regular courses of lectures of at least six months each in different years, in some legally incorporated veterinary college or university, prior to the granting of said diploma or foreign license, such proof shall be made, if required, upon affidavits; upon making the said payment and exhibiting the before-named proof, the examining board, if satisfied with the same, shall issue to such applicant an order for examination; in case of failure at such examination, the candidate, after the expiration of six months and within two years, shall have the privilege of a second examination by the board of veterinary medical examiners, without the payment of an additional fee; * * *.” 20 30

Herein is comprehended that class of persons who have completed their studies after the first Monday of May, 1902, and there is set forth the quality of educational requirement. Those coming within its purview must have had the particular training prescribed before being *entitled* 40

Opinion of the Supreme Court.

to take an examination for license. This provision does not affect the relator.

It is the third and last provision of this section upon which the relator relies, and the language is as follows:

- 10 “* * * and it is further provided, that applicants examined and licensed by the state board of veterinary medical examiners of other states, on payment of a fee of ten dollars to the examining board of this state, and on filing in the office of said board a copy of said license, certified by the affidavit of the president or secretary of the board of such other state, showing also that the standard of the examination and other requirements adopted by that state board of veterinary medical examiners is substantially
20 the same as that provided for by this act, shall without further examination, receive a license conferring upon the holder thereof all the rights and privileges provided by sections four and six of this act.”

- 30 Whatever rights the relator has arise out of this last provision. The language must be construed to accomplish the legislative purpose, and it is plain that the provisions of the section just quoted apply to those who hold the license of another state and desire to be licensed here on the strength of such foreign license. But what our statute requires is that “the standard of *examination* and other requirements” in such other state shall be the same, substantially, as that provided for by this act. Our statute requires, among other things, that the applicant shall have
40 “received a diploma conferring the degree of veterinary medicine from some legally incorporated veterinary college or university of the United States, or a diploma or license conferring

Opinion of the Supreme Court.

the full right to practice all the branches of veterinary science in some foreign country (which, in the opinion of said board, was in good standing at the time of issuing said diploma)

* * *." The relator fails to show that he has such degree of veterinary medicine from a legally incorporated veterinary college, his training having been acquired in a Canadian correspondence school, which is not recognized as an approved school by the New Jersey veterinary board. The statute also requires that the standard of examination in the foreign state shall be substantially the same as ours. The relator has never passed any examination for license. 10

The relator argues that the mere certification by affidavit, that the standards in each state since the year 1912 are the same, is sufficient to compel the issuance of a license. 20

It may be admitted that the standard since 1912 is the same. But this, in our view, is immaterial. The proper construction of the statute seems to require that the relator, in order to obtain his license to practice veterinary medicine now, must show at least that he has complied with the requirements of the first provision of section 6 of the statute, as indicated above. That he does not come within its purview is manifest from what has been said above. It is likewise apparent that he does not come within the provision of the third section since he never passed an examination in the State of Indiana and since it does not appear in the case that the requirements in Indiana, in 1902, were the same as those presently required in New Jersey. 30

Adverting again to the first provision of the section in question, it is apparent that the New Jersey board has the right to determine whether 40

Opinion of the Supreme Court.

the school from which the applicant received his diploma was in good standing at the time of its issuance. It has determined that it was not and this is a proper delegation of discretion. *College of Mecca of Chiropractic v. State Board of Medical Examiners*, 113 N. J. L. 327.

- 10 In interpreting statutes the object should be to ascertain and give effect to the intention of the legislature. *Clarkson v. Ley*, 106 N. J. L. 380. Courts, under these circumstances, look to the substance of the statute rather than to the form. *McCarthy v. Walters*, 107 *Id.* 223. It is the intention rather than the letter of the law that should prevail. *Associates of Jersey Co. v. Davison*, 29 *Id.* 415. The statutory construction should be reasonable. *Hart v. Central Railroad*, 20 9 N. J. *Mis. R.* 121.

The respondent argues that the relator's review of the denial to issue him license should have been by *certiorari* rather than *mandamus*. We do not pass upon the point, preferring to consider the questions involved on their merits.

The Court's peremptory *mandamus* issues only when the facts are undisputed and the legal right clear.

- 30 Since, therefore, the relator relies upon the provisions of the statute, and since that portion of section 6, upon which he relies, clearly comprehends that he shall have been examined in the state whose license the state veterinary board of New Jersey is asked to honor, and since it appears that he has not been so examined, and since further, the statute, as we think, requires that the preliminary educational requirement shall be substantially the same, and here apparently it is not, the relator cannot prevail.

- 40 Judgment for respondent, with costs.

*Rule for Judgment.***RULE FOR JUDGMENT.**

This matter being opened to the Court upon an Alternative Writ of Mandamus heretofore issued to the relator, the return of the respondent, the Demurrer thereto filed by the relator and the Stipulation of Facts of the parties, 10

WHEREUPON all and singular the premises aforesaid being seen and by the said Court fully understood, and mature deliberation thereupon had, it appears to the Court that the return to the Alternative Writ of Mandamus by the respondent presented, and by the said relator demurred to, is good and sufficient in law and that said Demurrer is not well taken, it is on this 28th day of December, Nineteen Hundred and Thirty-four, 20

ORDERED, that judgment be entered in favor of the respondent and against the relator, with costs.

Let the foregoing rule be entered in the minutes.

THOMAS J. BROGAN,
C. J.

On Motion of

LIONEL P. KRISTELLER,
Attorney of Relator. 30

Entered December 31, 1934.

Judgment.

JUDGMENT.

NEW JERSEY SUPREME COURT.

10	FRANK S. COOPER, vs. STATE BOARD OF VETERINARY MEDICAL EXAMINERS OF THE STATE OF NEW JERSEY, <i>Respondent.</i>	}	<i>Relator,</i> <i>On</i> <i>Mandamus.</i> <i>Judgment</i> <i>for</i> <i>Respondent.</i>
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20 And now at this day to wit, the thirty-first day of December, in the year 1934, before the Justices of the Supreme Court of New Jersey at Trenton aforesaid, comes as well the said Frank S. Cooper relator as the said State Board of Veterinary Examiners of the State of New Jersey respondent, by their attorneys aforesaid,

30 Whereupon all and singular the premises aforementioned being seen and by the said Court now here fully understood and mature deliberation thereupon had, it appears to the Court here that the Return to the Alternative Writ of Mandamus by the respondents presented and by the said relator demurred, is good and sufficient in law and that the demurrer thereto is not well taken and that said demurrer should be overruled.

40 Whereupon it is adjudged that the said demurrer to the Return be overruled and that the Alternative Writ of Mandamus be dismissed and that said respondent, State Board of Veterinary Medical Examiners of the State of New Jersey do recover of the said relator Frank S. Cooper

Notice of Appeal.

its costs which have been taxed at the sum of
\$.

Judgment entered and signed December 31,
1934.

10

NOTICE OF APPEAL.

To:

Hon. David T. Wilentz,
Attorney-General of the State of New Jersey,
Trenton, New Jersey.

SIR:

PLEASE TAKE NOTICE, that Frank S. Cooper,
the relator above named does hereby appeal to
the New Jersey Court of Errors and Appeals
in the last resort in all causes, from the whole
of the judgment entered in the above entitled
cause on the 31st day of December, 1934 in favor
of the respondent and against the relator.

20

Dated: December 31, 1934.

LIONEL P. KRISTELLER,
Attorney of Relator.

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*Grounds of Appeal.***GROUND OF APPEAL.****NEW JERSEY COURT OF ERRORS
AND APPEALS.**

10	FRANK S. COOPER, <i>Relator-Appellant,</i> <i>vs.</i> STATE BOARD OF VETERINARY MEDICAL EXAMINERS OF THE STATE OF NEW JERSEY, <i>Respondent-Appellee.</i>	} <i>On Appeal</i> <i>from</i> <i>Supreme</i> <i>Court.</i> <i>Grounds</i> <i>of Appeal.</i>
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To:

20 Hon. David T. Wilentz,
 Attorney-General of the State of New Jersey,
 Attorney for Respondent-Appellee,
 Trenton, New Jersey.

SIR:

The appellant writes down the following
 grounds of appeal:

1. That the Supreme Court erred in denying
 appellant's application for a peremptory writ of
 mandamus.
- 30 2. That the Supreme Court erred in entering
 judgment in favor of the appellee and against
 the appellant.
3. That the Supreme Court erred in decid-
 ing that under Section No. 6 of "An Act to regu-
 late the practice of Veterinary Medicine, Sur-
 gery and Dentistry in the State of New Jersey,
 to license Veterinarians and to punish persons
 violating the provisions thereof," and the Acts

Grounds of Appeal.

amendatory thereof and supplemental thereto, appellant to be entitled to a license to practice in New Jersey, was required to have a degree of Veterinary Medicine from a legally incorporated veterinary college approved by appellee; whereas under the 3rd provision of Section No. 6 of the aforesaid Act, appellee had no discretion or power to pass upon the personal or educational qualifications of appellant, appellee being required to issue the license upon appellant's depositing the requisite fee and filing the affidavit prescribed by the said provision of the Statute. 10

4. That the Supreme Court erred in deciding that appellant had never passed any examination for license in Indiana as required by the third provision of Section No. 6 of the "Veterinary Act"; whereas the license issued to appellant by the "Indiana Veterinary Examining Board" was plenary proof that appellant had passed the examination prescribed by the Indiana Board. 20

5. That the Supreme Court erred in deciding that under Section No. 6 of the "Veterinary Act," appellant, to be entitled to a license to practice in New Jersey, was required to show compliance with the first provision of Section No. 6; whereas the first provision of Section No. 6 does not apply to appellant who was previously examined and licensed in another state, but applies solely to New Jersey applicants whose education had been completed but whose registration had not been recorded prior to the enactment of the Statute in May, 1902. 30

6. That the Supreme Court erred in deciding that under the third provision of Section No. 6 of the "Veterinary Act," appellee had the right 40

Grounds of Appeal.

to determine whether the school from which appellant received his diploma was in good standing at the time of its issuance; whereas under said third provision of Section No. 6 of the said "Veterinary Act," appellee had no discretion or power to pass upon the personal or educational qualifications of appellant, appellee being required to issue the license upon appellant's depositing the requisite fee and filing the affidavit prescribed by the said provision of the Statute.

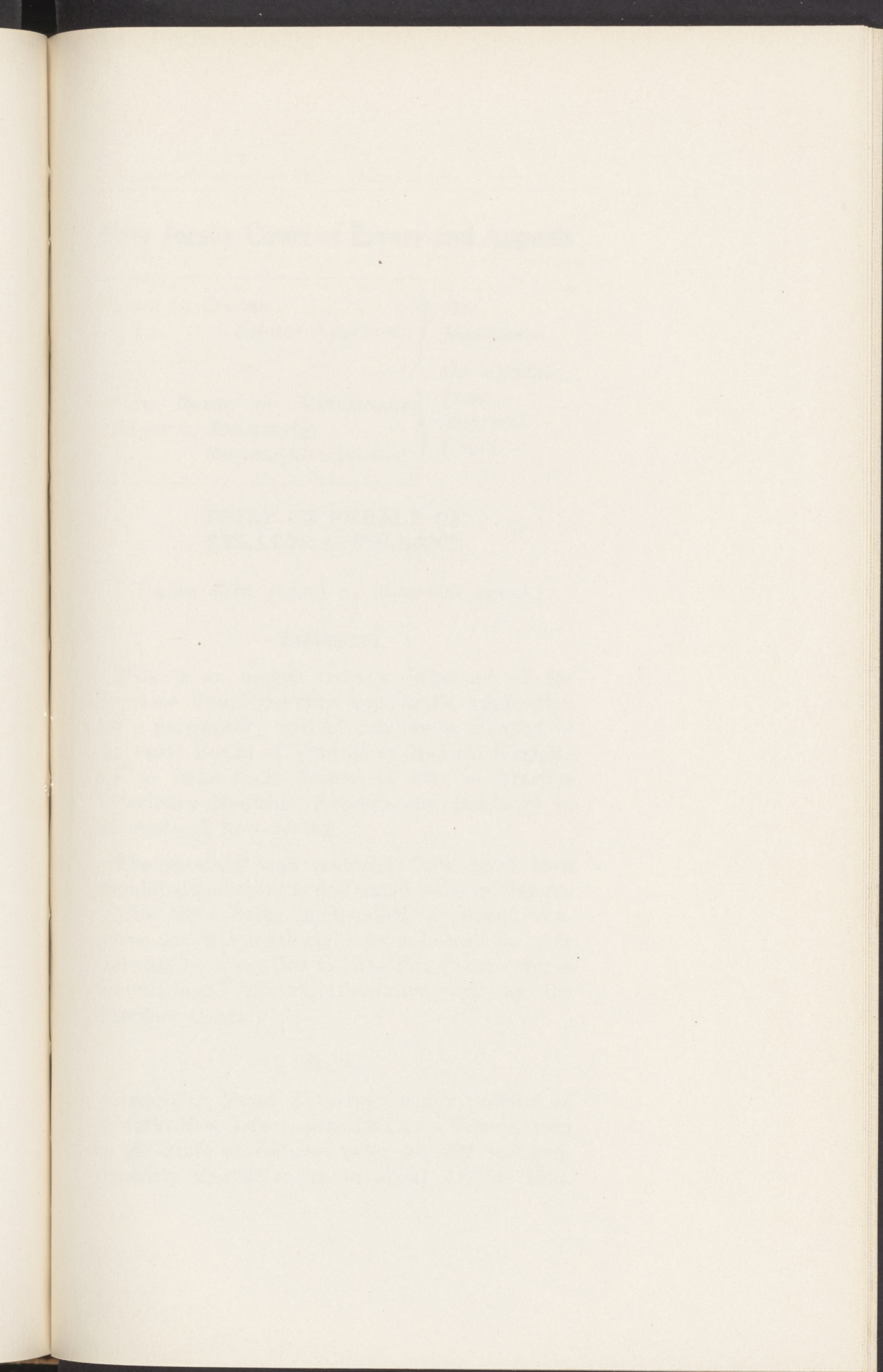
Dated: January 15, 1935.

LIONEL P. KRISTELLER,
Attorney for and of Counsel
with Relator-Appellant.

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New Jersey Court of Errors and Appeals

FRANK S. COOPER,

Relator-Appellant,

vs.

STATE BOARD OF VETERINARY
MEDICAL EXAMINERS,

Respondent-Appellee.

*On
Mandamus.*

*On Appeal
from
Supreme
Court.*

BRIEF ON BEHALF OF RELATOR-APPELLANT.

(Italics ours, except as otherwise noted.)

Statement.

This is an appeal from a judgment of the Supreme Court denying appellant's application for a peremptory writ of mandamus directed to the State Board of Veterinary Medical Examiners to issue their license to him to practice Veterinary Medicine, Surgery and Dentistry in the State of New Jersey.

The essential and material facts have been stipulated and there is no factual issue in dispute.

The facts being undisputed appellant contends that his legal right to a license is clear and that he is entitled to have this Court reverse the dismissal of the alternative writ by the Supreme Court.

Facts.

Appellant, Frank S. Cooper, now a resident of Newark, New Jersey, practiced as a Veterinarian in the State of Indiana prior to 1902 and continuously thereafter up to about August 1931.

Cooper is, therefor, a practitioner of many years standing, and the practice of Veterinary Medicine, Surgery and Dentistry is his only means of earning a livelihood.

In 1901 (March 11, 1901) the State of Indiana enacted a Statute requiring Veterinarians theretofore practicing to register with the Clerk of the County in which they practiced. Upon such registration a license was issued by the County Clerk entitling the practitioner thereafter to continue the practice of his profession. Cooper, having complied with that statute, received his license to practice on January 23, 1902 (S. C. 5, Stip., Par. 3, and S. C. 9, Ex. R. 1). This was prior to the adoption of the New Jersey Statute now under discussion (P. L. 1902, p. 36, approved March 17, 1902).

Thereafter and up to the first Monday in May, 1902 (the date when the present act, "P. L. 1902, p. 36," became effective) Cooper could have moved to New Jersey and practiced as a Veterinary here. Such practice would have been authorized under the provisions of the then existing statute entitled, "An Act to protect the title of Veterinary Surgeons and to regulate the practice of Veterinary Medicine and Surgery in New Jersey," P. L. 1889, Chap. 24, Sec. 5, p. 38, etc.; 4 C. S. 5710, Sec. 15 (5), which reads as follows:

"15. Act; how construed.—Sec. 5. That nothing in this act shall be so construed as to prevent any veterinary surgeon (if legally qualified to use the title) from using the title of 'veterinary surgeon' or analogous title, in this state; but if such veterinary surgeon opens an office or uses the title for the transaction of business, he shall be deemed a 'sojourner,' and shall conform to the requirements of this act (P. L. 1889, p. 39)."

Had Cooper done this and registered in New Jersey prior to the first Monday in May, 1902, he could have continued to practice in New Jersey thereafter, since the 1902 Act did not in anywise interfere or disturb the then existing practitioner.

Had Cooper applied for a license in this state shortly after the adoption of the 1902 Act—say, in 1903—, he would have been entitled to it by virtue of the 3d section of Paragraph 6 of the 1902 Act, dealing with the rights of non-resident practitioners intending to practice in New Jersey. Cooper's right to a license in 1903 would have been predicated on the fact that in *1903 the requirements of Indiana and New Jersey were substantially the same: viz.,*

(a) Indiana, in 1903 (pursuant to its 1901 Act) permitted theretofore practicing veterinarians to continue the practice of that profession (Cooper was in that classification and actually procured his license under that procedure);

(b) New Jersey, in 1903 (pursuant to its 1902 Act) permitted theretofore practicing veterinarians to continue the practice of that profession (those registered under the 1889 Act—under which Cooper would have been classified (Sec. 5) had he come to New Jersey prior to 1902—could continue to practice, as the introductory portion of the all important Section 6, specifically refers to applicants to be licensed *after* the Act became effective):

“From and after the first Monday in May, 1902, any person *not hereinbefore registered to practice veterinary medicine* * * *.”

The identical situation exists today. If Cooper could have been authorized to practice in 1903

(after the 1902 Act was passed), he is authorized to practice today.

This analysis of the statutes of the respective States of Indiana and New Jersey, as they existed 1902 and 1903, is adverted to at this time because it fits in with the chronological statement of facts, and because the Supreme Court, in its opinion, said:

“* * * it does not appear in the case that the requirements in Indiana, in 1902, were the same as those *presently* required in New Jersey” (S. C. 35, l. 35).

The foregoing discussion clearly demonstrates the similarity of the requirements in Indiana, in 1902, and the present (1932) requirements in New Jersey, which are the same as in 1902, since the 1902 Act has never been amended so far as affects Cooper's rights.

In 1911 the Indiana Statute referring to the practice of Veterinarians was amended. By the amendment, there was established a Veterinary Examining Board, and any Veterinary practicing for eight years prior to 1911 was granted a license by said Board without further examination. Other applicants were required to submit to such examination as the Board should provide (S. C. 5, Stip., Par. 5). All licensees were required to register and re-register with the Board for two year periods.

Appellant having been licensed under the 1901 Statute, and having practiced Veterinary Medicine for more than eight years prior to 1911, was promptly granted License No. 27 (S. C. 6, Stip., Par. 6) without further examination. Thereafter, he registered and re-registered every two years, and now holds registration certificate No. 677 (License No. 27), expiring July 15, 1935 (Stip.,

Par. 7, S. C. 6; Exhibit R. 2, S. C. 10). The license and registration in the State of Indiana are still in full force and effect (S. C. 6, Stip., Par. 8).

Cooper moved to New Jersey shortly after August, 1931, and in the spring of 1932 applied to the State Board of Veterinary Medical Examiners of the State of New Jersey for a license to practice as a Veterinary in this State. He complied with the last provision of Section 6 of "An Act to Regulate the Practice of Veterinary Medicine, Surgery and Dentistry in the State of New Jersey," etc. (4 C. S. 5707-5710). He paid the requisite fee of \$10.00. He also filed with the said Board a copy of his Indiana License certified by the affidavit of the Secretary of the Indiana Veterinary Board, that appellant was duly licensed to practice as a Veterinarian in Indiana at the time he made his application in New Jersey, and further certifying that the standard of the examination and other requirements adopted by the Indiana Veterinary Board are substantially the same as those provided by the New Jersey Act (S. C. 6, Stip., Par. 9).

Cooper's application was acted upon by Examining Board on June 24, 1932. They refused a license to appellant without examination on the sole ground that *he was not a graduate of a recognized Veterinary College* (S. C. 7, Stip., Par. 10).

Appellant has complied with the New Jersey Statute in every respect, and the refusal to issue a license to him is unwarranted and unjustified.

QUESTION INVOLVED.

Can a Veterinary duly registered prior to 1902 in a sister State under a statute similar to the statute then in force in New Jersey (P. L. 1889, p. 38, 4 C. S., 5710), who could have registered as such Veterinary in this State at that time, and who has been duly, regularly, and continuously licensed by the Veterinary Board of the sister State, whose requirements at the present time for a license are substantially the same as in New Jersey, obtain a license to practice in this State without further examination?

The question involved in this case has never been decided by this Court. The examination by counsel, of the New Jersey authorities fails to disclose that this Court has ever construed the Statute in question, or any similar statute. The reported cases are all in the Supreme Court and are at variance with the decision of the Supreme Court in the case at bar. It is, therefore, incumbent upon this Court, to pass upon the question involved in this case in order to reconcile the Supreme Court decisions.

This cause was first heard in the Supreme Court after the allowance of an Alternative Writ. In the order of Justice Parker allowing the Writ, he expressly stated that this cause presented questions of sufficient importance to prepare "a record leading to a judgment subject to review" (S. C. 2, l. 4). That was an acknowledgment by the Supreme Court in the first instance of the importance of the questions herein raised.

For Cooper, this review is the first and only appeal, and his very livelihood depends upon the decision of this Court.

POINT I.

Appellant has in all respects complied with the requirements of the New Jersey Statute governing the licensing of Veterinarians who have been licensed in other states, and is entitled to a peremptory writ directing the issuance of a license.

A—General Discussion of the Statute.

The pertinent part of the New Jersey Statute relating to the licensing of applicants to practice as Veterinarians is Section 6 of the Act (4 C. S. 5707 at 5708). This section is divided into three parts. Each will be discussed here under sub-heads 1, 2, and 3.

—1.—

“From and after the first Monday in May, one thousand nine hundred and two, any person not hereinbefore registered to practice veterinary medicine, surgery and dentistry in this state, or desiring to enter upon such practice, shall deliver to the secretary of the veterinary medical board, upon a payment of a fee of ten dollars, a written application for license, together with satisfactory proof that the applicant is more than twenty-one years of age, is of good moral character, has obtained a competent school education and has received a diploma conferring the degree of veterinary medicine from some legally incorporated veterinary college or university of the United States, or a diploma or license conferring the full right to practice all the branches of veterinary science in some foreign country (*which, in the opinion of said board, was in good standing at the time of issuing said diploma*); * * *”

This is designated by the Supreme Court as the first part of the Section (S. C. 32, l. 19), and, in the language of Brogan, C. J.,

“* * * prescribes the conditions that must be complied with by applicants who

have not, *prior to its enactment*, been registered to practice Veterinary Medicine, but whose education had been completed before the statute went into effect and who seek a license" (S. C. 33, l. 3).

—2.—

The second provision continues as follows:

"* * * applicants who shall have received their degree in veterinary medicine after the first Monday of May, one thousand nine hundred and two, must have pursued the study of veterinary medicine for at least three years including three regular courses of lectures of at least six months each in different years, in some legally incorporated veterinary college or university, prior to the granting of said diploma or foreign license, such proof shall be made, if required, upon affidavits; upon making the said payment and exhibiting the beforenamed proof, *the examining board, if satisfied with the same, shall issue to such applicant an order for examination*; in case of failure at such examination, the candidate after the expiration of six months and within two years, shall have the privilege of a second examination by the board of veterinary medical examiners, without the payment of an additional fee; * * *"

Again in the language of the Supreme Court:

"Herein is comprehended that class of persons who have completed their studies *after the first Monday of May, 1902*, and there is set forth the quality of educational requirement. Those coming within its purview must have had the particular training prescribed before being *entitled* to take an examination for license. *This provision does not affect the relator*" (S. C. 33, l. 34).

The third and last provision and the one out of which appellant's rights arise, is:

“ * * and it is further provided, that applicants examined and licensed by the state board of veterinary medical examiners of other states, on payment of a fee of ten dollars to the examining board of this state, and on filing in the office of said board a copy of said license, certified by the affidavit of the president or secretary of the board of such other state, showing also that the standard of the examination and other requirements adopted by that state board of veterinary medical examiners is substantially the same as that provided for by this act, SHALL without further examination, receive a license conferring upon the holder thereof all the rights and privileges provided by sections four and six of this act (P. L. 1902, p. 38).”*

The Supreme Court conceded that appellant's rights arose out of this last provision (S. C. 34, l. 25). But in construing the legislative intent, the Supreme Court erroneously held that in order to comply with the third provision of Section 6, an applicant had likewise to comply with the first provision. This construction is absolutely inconsistent with the Supreme Court's analysis of Section 6 and its express statement that it is under the third provision—apart from the first or second provisions—that appellant's rights are to be fixed.

The Supreme Court has read into the third provision (dealing with licensees of sister States seeking a license in New Jersey), the requirements of the first provision (dealing with applicants in the first instance, whose education had been completed but who had not been registered before 1902). Such a construction is unwarranted by the language of the Act, and imposes

upon appellant conditions that were never intended by the Legislature.

It is obvious that an applicant previously licensed to practice as a Veterinarian in another State *upon depositing the requisite fee with the New Jersey Board and a copy of his license, certified to by the Secretary of the Board of the other State, that the standard of the examination and the other requirements of the other State are substantially the same as those in New Jersey*, shall, without further examination, receive a license to practice as a Veterinarian in New Jersey *as a matter of right. No discretion is allowed to the Board.* If the application conforms to the requirements set forth by the third and last provision of Section 6 of the Act, the Board must issue its license.

B—Discussion of the Board's Obligations under the Third Provision of the Statute.

A reading of the third provision of Section 6 above quoted, discloses that no discretion is allowed to this Board in passing upon applications of practitioners licensed in other states.

The Supreme Court fell into error when it engrafted upon the third provision of Section 6, the conditions imposed upon applicants under the first provision of that section. The legislative intent to divide Section 6 into three classes is clear. There is no conflict in these provisions, and no one classification encroaches upon the other. They are so independent of each other, that they might have been enacted as separate sections of the Statute.

The Supreme Court first erred in deciding that

“* * * Our statute requires, among other things, that the applicant shall have ‘received

a diploma conferring the degree of veterinary medicine from some legally incorporated veterinary college or university of the United States, or a diploma or license conferring the full right to practice all the branches of veterinary science in some foreign country (which, in the opinion of said board, was in good standing at the time of issuing said diploma) * * *” (S. C. 34, l. 36).

This reasoning requires that the first and third provisions must be read together. This clearly, the Legislature did not intend.

Secondly, the Act, under discussion does not, as stated by the Supreme Court require, that:

“* * * ‘the standard of examination and other requirements’ in such state shall be the same, substantially, as that provided for by this act” (S. C. 34, l. 31).

All that the third provision of Section 6 requires is a *certification by the examining board of the sister State that its requirements are “substantially the same.”* This is quite different from saying *the applicant must have the qualifications required by New Jersey, or must prove to the satisfaction of the New Jersey Board that the requirements are substantially the same.* If the affidavit of the Secretary of the Board of the sister State says that the requirements of the other State are substantially the same as New Jersey, the immediate qualifications of the applicant are not in issue.

Under the third provision of Section 6, all that is required of a practitioner licensed in a sister State is:

- (a) To deposit Ten Dollars,
- (b) To file a certified copy of his license in the sister State,

(c) To file an affidavit of the Secretary of the sister State, "showing also that the standard of the examination and other requirements adopted by that State (sister State) Board * * * is substantially the same as that provided for by this Act (New Jersey)."

Cooper having complied with the requirements of the third provision of Section 6, is entitled to his license as a matter of right. Having been licensed in Indiana, which according to the affidavit of the Secretary of the Indiana Board (S. C. 6, Stip., Par. 9), has substantially the same requirements as New Jersey, *appellee has neither discretion nor power to pass upon the scholastic qualifications of appellant.*

The complete distinction between the third provision and the other two provisions of Section 6 is apparent when we observe the degree of power delegated to the Board under each of the provisions.

Under the first provision, the Statute, referring to the scholastic institution conferring the degree, says,

"* * * (which in the opinion of said board, was in good standing at the time of issuing said diploma); * * *"

Under the second provision, the Statute after stipulating the scholastic requirements, provides that,

"* * * the examining board, if satisfied with the same, shall issue to such applicant an order for examination; * * *"

The failure to specifically allow to the Board discretion in considering the applications under the third provision was intentional. *In this last classification the Board may not inquire into the*

scholastic standing of the university from which the applicant received a degree or his scholastic qualifications. The Board's duties are purely formal and ministerial. The license, certified to and supported by the affidavit of the Secretary of the Examining Board of the other State is conclusive, and the Board is required to license the applicant upon receipt of the papers.

Appellant's contention in this respect is recognized by the Supreme Court in *Stretch v. The State Board of Medical Examiners*, 88 N. J. L. 92 (1915). In that case the Court classified the various Statutes authorizing the granting of licenses in the several professions. These Statutes the Court divided into three classes:

(a) *Those which grant to the governing board discretion in the consideration of the proofs and facts submitted (their conclusion will not be disturbed by the Court, except upon a showing of an abuse of discretion);* See: "The Medical Act," 3 C. S. 3329, amended P. L. 1925, Chap. 134, p. 359; Supp. to C. S. 1925-1930, p. 965 at 967, Sec. E;
Ruffu v. Board of Medical Examiners, 10 Misc. 1209.

(b) *Those which grant to the board no discretion, but which leave to the board the power to inquire into the truth of the facts and proofs submitted (in this class, the Court will weigh the proofs and independently make its own findings and determination);* See: "The Osteopathy Act," P. L. 1915, Chap. 317, p. 564; 1 Cum. Supp. to C. S. 1911-1924, p. 1896 at p. 1899;

Stretch v. Board of Medical Examiners, 88 N. J. L. 92, and

(c) *Those which give the Board neither discretion nor power to inquire into the truth of the facts or proofs submitted, but which make mandatory the granting of a license upon the filing of the required papers; See: "The Veterinary Act" here under discussion.*

In the Stretch case, *supra*, the Supreme Court considered the "Osteopathy Act." While the Court placed that Act in Class (b) above, it nevertheless recognized the existence of the other classifications, a and c above, in the following language:

"* * * Acts of this character are usually phrased in such a way as to require proof 'to the satisfaction of said board,' or the like, and in such cases the board is the statutory judge of the facts (this is Class a above). The act under consideration is different from these, and different also from the class of statutes which prescribed that any one who shall make an affidavit of certain facts shall be entitled to certain relief. Its intent is plain. By its express language it is limited to any person who is a graduate of a specified institution, and who is actively engaged in the practice of osteopathy in this State and who is a resident, etc. Such person shall upon proof of said facts by affidavit, etc., be entitled to a license (this is Class b above). *This is very far from saying that any person who makes affidavit that he is a graduate engaged in practice, and resident as above, and files such affidavit and a diploma with the board, shall have a license (this is Class c above).* * * *"

Appellant maintains that the "Veterinary Act" falls squarely within classification "c" above. The Board has no discretion; it may not consider of the truth of the proofs submitted before it, nor of the personal qualifications of the applicant.

The applicant need not even be a resident of this State; no proof by his own affidavit is required under the Act. This gives further indication of the intention of the Legislature to make the Board in this class of cases a purely ministerial body. Therefore, upon the filing of the requisite papers, the appellant "*Shall* without further examination receive a license."

A reference to the "Medical Act," (3 C. S. p. 3329, at 3330, as amended by Chapter 134, P. L. 1925, p. 359); a reference to the "Dental Act" (2 C. S. 1911, at 1913, Section 6); a reference to the "Osteopathy Act," as supplemented by P. L. 1915, Chap. 317, page 564, indicate that in none of these statutes is mandatory action imposed upon the Board. In all of these acts the Legislature has expressly bestowed upon the Examining Board either a discretionary power or the right to examine into the truth of the facts set out in the papers.

The "Veterinary Act," however, differs from the foregoing. The Legislature, by this Statute, gave to the Board discretionary power under the first and second provisions of Section 6, *but clearly under the third provision imposed mandatory action without the exercise of any discretion whatever.*

The Legislature in the enactment of Statutes has not indiscriminately used the words "shall" and "may." *Saxenmeyer v. Dental Board*, 79 N. J. L. 427, clearly enunciates the policy of the Court in construing these two words. "*May*" allows a discretion; "*shall*" implies mandatory action.

In first and second provisions of Section 6 of the "Veterinary Act," the use of the word "*shall*" in conjunction with the qualifying

phrases "*in the opinion of the Board*" and "*if satisfied with the same*" is equivalent to the use of the word "*may*."

In the third provision of Section 6 dealing with applicants licensed in other States, the use of the word "shall" without any qualification whatever is mandatory. This language brings the "Veterinary Act" now under discussion, squarely within the classification referred to by the Supreme Court in the Saxenmeyer case, supra:

"** * * The statute, in cases where an examination is successfully passed, uses the word 'shall,' but the same section of the statute, in referring to applicants who seek a license without successfully passing the examination required by the statute, uses the word 'may,' which we think clearly indicates that the Legislature intended that in one case no discretion should be allowed, while in the other the power to license is discretionary, otherwise it is difficult to understand why 'shall' was applied to one class of cases and 'may' to another. * * **"

The Court held that the use of the word "shall" with respect to those applicants who had successfully passed an examination made it compulsory upon the Board to issue a license. The use of the word "may" with respect to applicants licensed in other States, left it to the discretion of the Board whether a license in New Jersey would be granted.

A similar interpretation of the use of the word "shall," without qualification, with respect to the licensing of an applicant in one of the professions, was recognized by the Supreme Court in dealing with the "Medical Act" (3 C. S., 3329, as amended P. L. 1925, Chap. 134, p. 359) in *Ruffu v. The State Board of Medical Examiners*, 10 Misc. 1209.

In that case the applicant applied to the Medical Board for a license to practice medicine and surgery. He had been licensed to practice medicine by the Examining and Licensing Board of Illinois. The New Jersey Board considered his application and *made a finding* that the institution from which the relator had been graduated was not approved by the Board of Medical Examiners of this State. That Board, therefore, *exercising the discretion allowed to it under the "Medical Act"* refused to grant the license.

The section of the "Medical Act" which governed the Court's action in the *Ruffu* case, reads as follows:

" * * * Any applicant for license * * *
upon proving to the satisfaction of said
board that he is of good moral character
* * * and that he has been examined and
licensed by the examining and licensing
board of another state of the United States
* * * and that at the time of the granting
of such license the standard of requirements
for license to practice medicine and surgery
in the state where such license was granted
* * * was at least substantially equal to
the standard of requirements for such license
in force in this state *at said time*, and upon
filing with the secretary of said board a copy
of his license or certificate, verified as a
true copy by the affidavit of the secretary
of the board granting such license, *may, in
the discretion of the said board of medical
examiners of this state*, be granted a license
to practice medicine and surgery without
further examination. * * * " P. L. 1925,
Chap. 134, p. 359 at p. 362.

Referring to this Section, the Supreme Court said:

"The words '*in the discretion of the said Board*' contained in Subdivision E, Sec. 4, *supra*, may not be disregarded. In their

absence the relator would be entitled to a license."

Appellant submits that in the absence in the third provision of Section 6 of the "Veterinary Act," of the words "*in the discretion of the Board,*" or language similar thereto, Cooper is entitled to his license. The *Ruffu* case, *supra*, is absolute and unqualified authority for this proposition.

The instant case must, therefore, be reconciled by this Court with the *Saxenmeyer* and *Ruffu* cases herein referred to. *Only a reversal of the judgment of the Supreme Court in this case will harmonize it with the other two cases.*

Until the Statute is changed so that the Veterinary Board in passing upon applications of practitioners of sister States is given power, either to exercise its discretion, or to inquire into the truth of the facts contained in the affidavit, *licenses must be granted to non-resident practitioners who have filed the requisite papers.*

Relator maintains that he has fully satisfied in every respect that portion of Section 6 of the New Jersey Act which deals with applications of Veterinarians of other States and is entitled to receive his license.

Therefore, the refusal of the Supreme Court to grant the peremptory writ of mandamus constitutes reversible error.

POINT II.

Discussion of Supreme Court opinion as specifically referred to in Grounds of Appeal, Nos. 3, 4, 5 and 6.

While the above mentioned grounds of appeal have been adverted to and urged in the preceding point, specific reference to certain portions of the Supreme Court opinion is relevant to show the inconsistency which exists between the decision in the Supreme Court, and the express language of the Statute and other decisions of the Supreme Court.

A.

The Supreme Court held:

“The Relator fails to show that he has such degree of veterinary medicine from a legally incorporated veterinary college, * * *” (S. C. 35, l. 8).

In view of what has been said earlier in this Brief, and by reason of the express language contained in the third provision of Section 6 of the Act, neither the Examining Board nor the Supreme Court had the right to inquire into the scholastic standing of the institution from which Cooper procured his degree. Whether that institution was legally incorporated or not is beside the point.

The 1902 legislative enactment grants certain rights to practitioners licensed in sister States who desire to practice in New Jersey. The Statute approves the licensing of practitioners of sister States where the requirements of the foreign State are substantially the same as in New Jersey. The Legislature never intended that a Veterinary, licensed and practicing for thirty years in a sister State having requirements sub-

stantially the same as in New Jersey, should be compelled to submit to a written examination and comply with the scholastic regulations imposed. To adopt any other construction is both unwarranted and unreasonable. Cooper's experience as a practicing Veterinary for upwards of thirty years is so thorough that it should not be curtailed by straining the interpretation of the Statute to require him to meet the requirements imposed upon applicants seeking a license in the first instance in New Jersey.

The third provision of Section 6 grants to the Examining Board merely formal and mandatory duties. The deposit of the requisite fee and the filing of the requisite affidavit sworn to by the Secretary of the Examining Board of the sister State makes it incumbent upon the Board in this State to grant the license to Cooper.

B.

The Supreme Court further held:

"The relator has never passed any examination for license" (S. C. 35, l. 17).

"* * * It is likewise apparent that he does not come within the provision of the third section since he never passed an examination in the State of Indiana * * *" (S. C. 35, l. 32). * * *

"Since, therefor, the Relator relies upon the provisions of the Statute, and since that portion of Section 6, upon which he relies, clearly comprehends that he shall have been examined in the State whose license the State Veterinary Board of New Jersey is asked to honor, *and since it appears that he has not been so examined*, * * *" (S. C. 36, l. 30).

The foregoing quotations indicate that the Supreme Court was under the impression that Cooper had never been examined in any State. The use of the word "examined" in Section 6 of the Act does not mean that applicants must have submitted to a written examination. If such interpretation had been intended, the Legislature would have adopted unmistakable language to insure of such an interpretation.

Appellant contends that the license granted to him by the State of Indiana on January 23, 1902, is plenary proof that the requirements of the Statute of Indiana had been fulfilled. The language of appellant's certificate obtained on that date reads as follows:

"In accordance with an Act of the Legislature approved by the Governor of the State of Indiana on March 11, 1901, *and the presentation of evidence of the fulfillment of the requirements of said Act*, I hereby issue certificate to Frank S. Cooper to practice Veterinary Medicine and Surgery or any branch thereof in the State of Indiana * * *" (S. C. 9, Ex. R. 1).

Such compliance constituted the examination of the applicant required by the State of Indiana at that time.

Cooper would never have been permitted to continue the practice of Veterinary in Indiana for thirty years unless the Board in that State was satisfied with his qualifications. This is the examination contemplated by our Statute. To adopt any other construction would indicate a concerted effort not to follow the New Jersey Statute, but to improperly restrain Cooper from the lawful practice as a Veterinary in this State. It seems that the New Jersey Board is resorting to every means to achieve the single end of keep-

ing appellant from earning an honest living in this State.

The license to Cooper in Indiana in 1902, and his continued practice for so many years in that State, as evidenced by his last renewal certificate in 1933 (S. C. 10), are plenary proof that he complied with that provision of Section 6 of the New Jersey Act, requiring all applicants from sister States to have been examined in the sister State.

C.

The Supreme Court further held:

“* * * The proper construction of the Statute seems to require that the Relator in order to obtain his license to practice Veterinary Medicine now, must show at least that he has complied with the requirements of the first provision of Section 6 of the Statute, as indicated above. * * *” (S. C. 35, l. 24).

The analysis of Section 6 of the Act in question contained in the Supreme Court opinion (S. C. 32-34) divides the Section into three classes. These classes are separate and distinct; as said in the opinion, they clearly comprehend three distinct classes of applicants.

The *first provision* refers to applicants whose education had been completed prior to the time that the Statute went into effect, but who had not been actually registered at that time (the first Monday in May 1902). The express language used by the Legislature under this provision is loose and incomplete. It contains neither subject nor predicate of an independent clause. *It stipulates what applicants under this classification must do, but it fails to state that when these acts are done, the Board will grant them*

a license or that the applicants may continue to practice as Veterinaries.

The *second provision* comprehends applicants whose education had not been completed when the 1902 Act went into effect, and imposes upon such applicants the educational requirements that must be met.

The *third provision* comprehends applicants licensed to practice in sister States, and prescribes the duties of the Board when the requisite deposit and affidavit are filed. If the affidavit of the Secretary of the Examining Board of the sister State sets forth that the applicant holds a license and that the requirements of the sister State are substantially the same as the requirements of New Jersey, then in the language of the Statute, the applicant,

“* * * Shall without further examination, receive a license * * *.”

How the requirements of the first provision can be read with, engrafted upon, and limit the third provision, is beyond appellant's comprehension! Had the Legislature intended to grant the Board discretionary power in dealing with applicants under the third provision, it would have employed unmistakable language to carry out its intent, similar to that used in the first and second provisions.

It is both illogical and unreasonable to compel Cooper to do anything more than is required under the reasonable interpretation of the third provision.

D.

The Supreme Court further held:

“* * * It is apparent that the New Jersey Board has the right to determine whether the school from which the applicant received his diploma was in good standing at the time of its issuance” (S. C. 35, l. 40).

What has been said under “A” of this point sufficiently answers this statement of the Supreme Court. If, as maintained throughout this Brief, the State Board has no discretion in passing upon the personal qualifications or educational requirements of applicants licensed in sister States, then it is mandatory upon the Board to issue the license if the applicant files the formal documents and makes the deposit mentioned in the third provision of Section 6 of the Act.

In every instance where the Courts have permitted discretion to an Examining Board, there has been an express and unmistakable grant of such power in the Statute under which the Board acts. (See discussion of “Medical Act,” “Dental Act,” etc., under Point I herein.) *In the Veterinary Act, discretionary power in passing upon applicants licensed in sister States is definitely withheld from the Board.* While discretion is allowed under the first two provisions of Section 6, the Legislature, by excluding language indicating an intent to grant discretion to the Board in passing upon applications coming within the third provision of the Act, has definitely limited the Board to purely formal and ministerial acts in this last class. It is mandatory upon the Board, if the formal requisites of the third provision of Section 6 are satisfied, to grant the license.

POINT III.

Discussion of cases referred to in the Supreme Court opinion.

The Supreme Court, to sustain its position, cited five cases. We shall discuss some of them in the order in which they are found in the opinion.

A.

College of Mecca v. State Board of Medical Examiners, 113 N. J. L. 327.

This is a per curiam affirmance of an opinion in the Supreme Court to sustain the point that the Legislature may delegate discretion to a properly constituted Examining Board under the "Medical Act."

Appellant finds no fault with this general statement. Had the Legislature granted to the Examining Board in the case at bar, discretion in dealing with applications of practitioners licensed in sister States, this appeal would not be pending. *It is the absence of the grant of discretionary power by the Legislature to the Examining Board in the instant case which is the basis of this appeal.*

Little can be gained from a reading of the cited case, but a reference to a similar attack upon the "Medical Act" in *State Board, etc. v. The College of Mecca, etc.*, 6 Mis. 677, indicates that Courts will not disturb a proper exercise of discretion by an Examining Board, exercised pursuant to an express legislative grant in the Statute under which the Board acts. Had not the express power of discretion been given in the "Medical Act," the Court could not have read into the Act such grant of discretion. It is for

the Legislature and not for the Courts to grant discretion where the same is not expressed in the Statute. The Supreme Court in the case referred to, said at page 679:

“Where that which is directed to be done is within the sphere of Legislation, and the terms used clearly express the intent, all reasoning derived from the supposed inconvenience, or even absurdity of the result, is out of place. *Douglass v. Freeholders of Essex County*, 38 N. J. L. 216.”

How aptly this language applies to the case at bar! The third provision, standing by itself, is unambiguous and clearly expresses the intent of the Legislature. Yet the Examining Board and the Supreme Court saw fit to engraft upon the third provision the requirements contained in the first provision.

It is this unreasonable, unwarranted, unintended, and illogical interpretation with which appellant finds fault.

B.

Clarkson v. Ley, 106 N. J. L. 380.

This case is relied upon by the Supreme Court to sustain the point “that in interpreting Statutes, the object should be to ascertain and give effect to the intention of the Legislature” (S. C. 36, l. 10).

This case deals with the interpretation generally of legislative enactments. This Court in that case, among other things, held:

“In the interpretation and construction of statutes the primary rule is to ascertain and give effect to the intention of the Legislature; and the intention of the Legislature is to be ascertained, not merely from the

language of the act taken as a whole, but where the language is not free from ambiguity, from the application of the act to existing circumstances and necessities."

The language of Section 6 of the Act in the instant case, and especially of the third provision thereof, is entirely clear and free from ambiguity. It is unnecessary to resort to existing circumstances and the necessities of the case. Appellant's interpretation is clear and logical. The strained interpretation of the Examining Board and the Supreme Court, is unwarranted.

C.

McCarthy v. Walters, 107 N. J. L. 223.

This case is relied upon by the Supreme Court for the proposition that:

"Courts, under these circumstances, look to the substance of the statute, rather than to the form" (S. C. 36, l. 13).

This is the position that appellant relies upon throughout. It is the substance and not the form that is the ground of this appeal. The Supreme Court in order to sustain the Board, strained the form of the Statute rather than interpreted the substance of it. It is obviously a perversion of language to engraft provisions upon a distinct classification of the Statute which do not exist in the classification by reference or otherwise.

A reasonable interpretation of the third provision of Section 6, and an examination into the substance of this provision, rather than the form, leads to but one conclusion, viz., that the Examining Board had no discretion to pass upon the educational requirements or personal qualifications of appellant. Its duties under this provision were purely formal and mandatory.

D.

Associates of Jersey Co. v. Davison, 29
N. J. L. 415.

This case is relied upon by the Supreme Court for the proposition that

“it is the intention rather than the letter of the law that should prevail.”

That case also, however, is authority for the position taken by the appellant. This Court, in the opinion by Justice Whelpley, held at page 424:

“The principle of construction is, that although a matter may fall within the words of the act, it shall not control it, unless within the reason and spirit also.”

* * * * *

“When the intention is doubtful, the Court will interpret the law consonant with equity and what is most convenient.”

There is no doubt as to the intent of the Legislature when it enacted the third provision of the Act under discussion. It would have been simple to have given the Examining Board discretion by the use of the proper words, similar to the language in the first and second provisions of the section.

The withholding of discretionary power in the third provision shows a clear and unmistakable legislative intent that the Examining Board was to be given no discretionary power.

POINT IV.

Mandamus is the proper remedy to review the action of appellee, and to compel it to issue a license to appellant.

Appellant contends that mandamus is the proper and, in fact, the only remedy by which he can compel appellee to issue him a license. That this is the recognized practice is evident from an examination of a case decided by the Supreme Court, *Ruffu v. State Board of Medical Examiners* (November 12, 1932), 10 Misc. 1209.

That case involved the refusal of the Medical Examining Board to issue to Ruffu a license to practice medicine in New Jersey. Ruffu had been licensed to practice in Illinois.

To review that action and to compel the issuance of a license to him, Ruffu sought a peremptory writ of mandamus.

The Supreme Court considered the action of the Board of Medical Examiners and upheld them. *In no part of the opinion is it intimated that mandamus was not the proper remedy.* On the contrary, the consideration which the case received, warrants the conclusion that the only relief available to an applicant in cases of the kind under discussion is mandamus. The *Ruffu* case, decided as recently as 1932, is authority for the procedure here adopted.

If there were any doubt as to the propriety of the use of the writ of mandamus to obtain the relief sought, it is set at rest by Stretch v. State Board of Medical Examiners, 88 N. J. L. 92. In that case an application was made for a writ of mandamus to compel the "Medical Board" to issue its license to the applicant, without exami-

nation, to practice Osteopathy. The "Medical Board" had refused to grant the license. The Supreme Court in an opinion by Justice Parker, discussing the procedure to review the action of that Board, said:

"* * * If its (the Board's) conclusion be adverse to the applicant, such applicant is not himself concluded thereby, but is entitled to have the facts ascertained judicially, and, if settled in his favor, to his license notwithstanding the prior adverse conclusion of the Board. *Such judicial ascertainment would, of course, be in a mandamus proceeding.*"

See also:

Saxenmeyer v. State Board of Registration and Examinations in Dentistry, 79 N. J. L. 427.

Relator insists therefore, that the present proceeding is proper.

CONCLUSION.

Appellant is entitled to receive a license to practice veterinary medicine and surgery in the State of New Jersey without further examination, and the refusal of the State Board of Veterinary Examiners to grant such license is unwarranted. This Court should therefore reverse the judgment of the Supreme Court, and order that Court to allow a peremptory writ of mandamus to command the immediate issuance of such license.

February 1935 Term.

Respectfully submitted,

LIONEL P. KRISTELLER,
Attorney for and of Counsel
with Appellant.

JACOB L. NEWMAN,
SAUL J. ZUCKER,
On the Brief.

CONSTITUTIONAL

Any law is entitled to receive a hearing to
test its necessity and utility in the
state of New Jersey without further examina-
tion and the refusal of the State Board of Veter-
inary Medicine to grant such hearing is unwar-
ranted. The State Board therefore reverses the
decision of the Supreme Court, and orders that
there be given a preliminary hearing of the matter
to determine the propriety of granting such
hearing.

It is so ordered.

THOMAS F. CHRISTENSEN

Attorney for and of Counsel
with Applicant

THOMAS A. NEWMAN,
State A. Newman,
On the Brief.

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NEW JERSEY Court of Errors and Appeals

FRANK S. COOPER, <i>Relator-Appellant,</i>	} On Mandamus On Appeal from Supreme Court
<i>vs.</i>	
STATE BOARD OF VETERINARY MEDICAL EXAMINERS, <i>Respondent-Appellee.</i>	

BRIEF OF RESPONDENT-APPELLEE

This is an appeal from a judgment of the Supreme Court dismissing an alternative writ of mandamus, and denying an application for a peremptory writ of mandamus commanding the State Board of Veterinary Medical Examiners to issue a license to Relator-Appellant, permitting him to practice veterinary medicine in the State of New Jersey. The facts are:

1. Frank S. Cooper in June, 1932, made application to the State Board of Veterinary Medical Examiners of the State of New Jersey for a license to practice veterinary medicine in the State of New Jersey.

2. The State Board of Veterinary Medical Examiners on June 24, 1932, took the following action on the application for license of Frank S. Cooper:

“The application of Frank S. Cooper for license without examination was then considered. Frank S. Cooper not being a graduate

of a recognized veterinary college but having a certificate from the Veterinary Science Association of London, Ontario, Canada, which is a correspondence school. Mr. Cooper presented a license issued to him by the authorities of the State of Indiana in 1906, as a NON-GRADUATE and desired to obtain a New Jersey license without examination. It was the unanimous opinion of the Board that Mr. Cooper's qualifications did not meet with the requirements of the New Jersey Law and that he be refused a New Jersey license."

3. That in the opinion of the said Board of Veterinary Medical Examiners of New Jersey, the regulations of the State of Indiana are not the same as the standard of requirements adopted by the Veterinary Board of the State of New Jersey.

4. That the said Frank S. Cooper is a non-graduate licensee of Indiana and that he has never pursued the study of veterinary medicine for at least three years, including three regular courses of lectures of at least six months each in different years in some legally incorporated veterinary college or university prior to the granting of said diploma, in accordance with section six of an act entitled, "An act to regulate the practice of veterinary medicine, surgery and dentistry in the State of New Jersey, to license veterinarians and to punish persons violating the provisions thereof," (P. L. 1902, p. 36).

5. That the State Board of Veterinary Medical Examiners has adopted a resolution placing certain schools for veterinary medicine on the approved list, which schools are recognized by the United States Department of Agriculture, Bureau of Animal Industry, and that the school from which the said Frank S. Cooper graduated, was a correspondence school and is not an approved school within

the meaning of the aforesaid act, or the rules and regulations of the State Board of Veterinary Medical Examiners.

6. That the State Board of Veterinary Medical Examiners has refused to grant a license to Frank S. Cooper because, in the opinion of said Board, his qualifications to practice veterinary medicine do not meet the requirements of the New Jersey statute concerning the practice of veterinary medicine.

7. The appellant is not entitled to have a writ of mandamus issued by the court because he does not come within the provisions of the act of the State of New Jersey.

In *Mooney vs. Edwards*, 51 N. J. L. 479, Mr. Justice Garrison, in discussing the writ of mandamus, at page 481, says:

“The distinction thus made is a valid one, and lies at the foundation of the system of rules which regulate the use of this extraordinary writ. Stated in a general way, the distinction is that the writ of mandamus will issue to compel the performance, in a specified manner, of ministerial duties so plain in point of law and so clear in matter of fact that no element of discretion is left as to the precise mode of their performance, but that as to all acts or duties depending upon a jurisdiction to decide question of law or to ascertain matters of fact, on the part of the officer or body at whose hands their performance is required, mandamus will not lie. As a corollary to this latter clause, it may be added that, as the writ will not issue to dictate in advance how the discretion shall be exercised, or the matter of fact decided, neither will it be allowed to disturb or override such determination if already reached.”

In *Kirchgessner vs. Board of Health*, 53 N. J. L. 594, Mr. Justice Knapp, speaking with reference to the writ of mandamus, at page 596, says:

“The writ of mandamus is not of right. The allowance of its use rests in judicial discretion. It is rarely issued to a subordinate body or tribunal for the purpose of directing the particular judgment that shall be given by such tribunal, or directing an act to be performed in a specified manner. It is only so used when the act to be done is a ministerial one merely, and the duty to perform it in a definite way is clear.”

In *Hugg vs. Ivins*, 59 N. J. L. 139, Mr. Justice Lippincott says, with reference to the writ of mandamus, at page 142:

“It is now well established that a writ of mandamus will only be directed to enforce a clear legal right. *If there exists a fair doubt respecting the right of the public or of the relator to mandamus some other form of remedy must be sought.* The right will be considered, but the right to be enforced must be clearly one to which the relator is entitled, *and if there be another specific remedy it must be invoked.*”

In *Mathis vs. Voorhees*, 81 N. J. L. 26, Mr. Justice Garrison, at page 29, says:

“The essential function of the writ of mandamus is to incite to official action. It is not the appropriate writ upon which to review official action already taken or by which to dictate in advance what such action shall be excepting in cases where the act to be performed

is so purely ministerial in character or its performance in any event so specifically prescribed that the only action contemplated is that of blind obedience."

In *Words and Phrases—Second Series*, at page 252, "Mandamus" and certiorari rest on distinct and opposite principles. The former *compels an unperformed ministerial duty*, the latter *reviews a performed judicial duty*, while neither operates to control discretion. The former never goes to control judgment, while the latter never goes except to review and control judicial judgment. *State ex rel. Rawlinson vs. Ansel*, 57 S. E. 185, 192, 76 S. C. 395, 11 Ann. Cas. 613.

In *Erion vs. Com. of City of Hoboken*, 104 N. J. L. 464, a writ of mandamus will not go where the legal right of the relator *is in doubt or unsettled*, and not until such right is established by an appropriate legal proceeding.

In *Scott vs. Mathis*, 136 Atl. 593, mandamus will never issue when the subject matter is discretionary.

To warrant issuance of writ of mandamus in any case, *petitioner's right must be clear and the public duty sought to be enforced, must be clear and specific*. *Uszkay vs. Dill*, 92 N. J. L. 327, 106 Atl. 17.

Writ of mandamus will issue only where legal obligation is clear. *Browne vs. Lee*, 98 N. J. L. 1, 118 Atl. 539.

Mandamus will not be granted where the facts are in dispute or law is not settled. *Hoffmeir vs. Board of Health*, 134 Atl. 610.

Mandamus held not to lie to compel Board of Health to grant permit for erection of Tuberculosis Hospital. Where Board had already acted in the matter—certiorari being the proper remedy. *Deborah Jewish Sanatorium vs. State Board of Health*, 145 Atl. 870.

The Board had the right to refuse a license to the relator because under *section two* of the act regulating the practice of veterinary medicine, Chapter 18, P. L. 1902, which action states in part:

“The said board shall *make and adopt all necessary rules, regulations and by-laws not inconsistent with the laws of this state or of the United States*, whereby to perform the duties and to transact the business required under the provisions of this act.”

Section three of said act sets forth that “Said Board shall *examine all diplomas as to their genuineness*, and each applicant for a license shall submit to a theoretical and practical examination.”

Section six of the said act reads as follows:

“From and after the first Monday in May, one thousand nine hundred and two, any person not hereinbefore registered to practice veterinary medicine, surgery and dentistry in this state, or desiring to enter upon such practice, shall deliver to the secretary of the veterinary medical board, upon a payment of a fee of ten dollars, a written application for license, together with satisfactory proof that the applicant is more than twenty-one years of age, is of good moral character, has obtained a *competent school education* and has received a diploma conferring the degree of veterinary medicine from some legally incorporated veterinary college or university of the United States, or a diploma or license conferring the full right to practice all the branches of veterinary science in some foreign country (*which in the opinion of said board, was in good standing at the time of issuing said diploma*); applicants who shall have received their degree in

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veterinary medicine after the first Monday of May, one thousand nine hundred and *two*, must have pursued the study of veterinary medicine for at least three years including three regular courses of lectures of at least six months each in different years, in some legally incorporated veterinary college or university, prior to the granting of said diploma or foreign license, such proof shall be made, if required, upon affidavits; upon making the said payment and exhibiting the before named proof, the examining board *if satisfied with the same*, shall issue to such applicant an order for examination; in case of failure of such examination, the candidate, after the expiration of six months, and within two years, shall have the privilege of a second examination by the board of veterinary medical examiners, without the payment of an additional fee; and it is further provided, that applicants examined and licensed by the state board of veterinary medical examiners of other states, on payment of a fee of ten dollars to the examining board of this state, and on filing in the office of said board a copy of said license, certified by the affidavit of the president or secretary of the board of such other state, *showing also that the standard of the examination and other requirements adopted by that state board of veterinary medical examiners is substantially the same as that provided for by this act*, shall without further examination, receive a license *conferring upon the holder thereof all the rights and privileges provided by sections four and six of this act.*

Section seven sets forth that—“No person shall enter upon or continue the practice of veterinary medicine, surgery or dentistry in any of their

branches in the State of New Jersey *unless he has complied with the provisions of this act.*"

The Board had a right to refuse Frank S. Cooper a license because the standards of examinations and other requirements adopted by the Board of Indiana are not the same as provided for by the act of the State of New Jersey. The act also sets forth that the applicant must have obtained a competent school education and his diploma is from a correspondence school and is not in accordance with the qualifications of section six of the aforesaid act. The act further says in section six that the examining board, *if satisfied with the same*, shall issue to the said applicant an order for examination, so this Board had discretionary powers as not being satisfied with the qualifications of the applicant, to refuse him a license.

If the said Frank S. Cooper feels aggrieved by the action of the State Board of Veterinary Medical Examiners, his *remedy is by writ of certiorari and not by mandamus.*

In the case of *Deborah Jewish Consumptive Relief Society vs. The State Board of Health*, filed September 16, 1929, and not reported, the Supreme Court said:

"The Legislature has said that the State Board of Health shall have the 'sole authority to grant or refuse a permit' for the establishment of such a sanatorium. If these words mean anything they mean that when there is reason to justify the action of the Board that no other tribunal shall have the power to change the result. There is reason in the record for the action of the State Board and it is immaterial that others may reach a different conclusion."

The action of the State Board of Health was sustained and the license of the prosecutor denied.

In the case of the *State Board of Medical Examiners against Ruffu*, 163 Atl. p. 15, the question was raised there that the college from which Ruffu graduated was not a school approved by the State Board of Medical Examiners of New Jersey. It was also admitted that at the time of the granting of the Illinois license, the standard of requirements for license to practice medicine and surgery in the State of Illinois was at least substantially equal to the standard of requirements for such license in force in this State at said time. The point upon which the court decided that case was that the school from which Ruffu graduated in Illinois was not recognized by New Jersey, and the court said:

"It appears further by the stipulated facts that the medical school at which the relator received his professional education and training is not an institution approved by the board of medical examiners of this State."

"It appears, therefore, that although, under the stipulation, the standard of requirements for license in the State of Illinois is substantially equal to the standard of requirements here, nevertheless in this particular instance a license was granted there in large part based on the credentials of an institution of which the board of this State does not approve. There is no partisanship or selective prohibition laid against the candidate. The fact that has barred him would be likewise applicable against any one, man or woman, of any race or creed, whose professional training had not measured up to the standard set by the New Jersey Board."

In the case of *Ruffu vs. Board of Medical Examiners*, the same facts in that case are now before the court—that the Board did not abuse discretion in refusing a license and that the appellant did not

receive his professional education or training in an institution approved by the Board, and that the standard of requirements of the State in which the applicant received his foreign license does not measure up to the standard of requirements set by the New Jersey Board, and while the act of the Veterinary Board is silent on the question of discretion, yet on the reading of the same, there is an implied discretion because in reading section six of the act, it sets forth that the examining board, *if satisfied* with the same, shall issue to the said applicant an order for examination and under the resolution adopted by the said board, they were not satisfied with his qualifications and not satisfied with the school from which he had graduated, because it was not an approved school, and they were not satisfied that the requirements for license in the State from which he received his license, were equal to the standard of requirements of this State and did not measure up to the standards set by the Veterinary Board of this State.

The duty imposed upon the State Board under the act is purely statutory. No question is here raised that the statutory formalities or requirements have not been complied with. The appellant objects because the State Board denied its application instead of granting it. When the State Board fixed a time and place of hearing and at such hearing heard all parties both for and against the application, which is the case here, the Board fulfilled its duty under the statute, except to either grant or withhold the consent and approval asked for. The Board acted and denied its consent to the relator. It is not the function of a writ of mandamus to compel the State Board to perform an act already completed nor to do it in a different way than already done.

Practically the same principle applies to the case before us. It is respectfully urged that this Court

should affirm the judgment of the Supreme Court for the following reasons:

1. That he has not complied with the statute.
2. That he has not shown that he was a graduate of a school in good standing and approved by the respondent.
3. That he has not shown to said board that he has the qualifications as set forth in paragraph six of the act aforesaid.
4. That it has not been shown that the requirements of the State of Indiana in granting a license to Dr. Cooper are equal to the requirements in this State.
5. That the Board, in its discretion, had a right to deny the application and that that discretion is an honest and truthful decision of said Board, without fraud but based upon the facts of the case.

CONCLUSION

The proviso in question, which is set forth in section 6 of the act, simply explains what previously had been stated in general terms and the only effect thereof is merely to permit an applicant holding a license to practice in other States to obtain a license to practice in this State where the Board is satisfied that the applicant has all of the qualifications prescribed by section 6. It is to be noted that this case does not fall within the exceptions set forth in section 9 of the act, but rather comes within the purview of section 6 thereof, which deals with qualifications of applicants. In conclusion let it be stated that it has always been the policy of Boards of this State to refuse applications for indorsement of licenses issued by other State Examining Boards where the qualifications, or credentials were such that they could not have been admitted to an examination in this State.

That the appellant did not possess the proper qualifications clearly appears from the record; that

his license was obtained in Indiana upon qualifications which have been neither permitted nor accepted in this State also appears. The affidavit of the secretary of the Indiana Board affirmatively discloses that appellant obtained his license in Indiana *without examination* (Case, page 21, line 9), and therefore, this case clearly does not fall within the meaning of the last proviso of section 6, which permits "applicants *examined* and licensed by the State Board of Veterinary Medical Examiners of other States" to obtain licenses without examination in this State.

The judgment of the Supreme Court should be affirmed.

Respectfully submitted,

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The license was obtained in Indiana upon qualification
which was then further perfected up to the
requirements of this State and was received. The applicant
the Secretary of the Indiana Board of Veterinary
Medicine that applicant obtained an license in
Indiana without examination on March 11, 1911. And
and therefore, this case clearly does not fall within
the meaning of the last review of section 2, which
periods, applicant examined and licensed by the
State Board of Veterinary Medical Examiners
of this State, to obtain license which was
not in this State.

The judgment of the Supreme Court should be
affirmed.

Respectfully Submitted,
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