

RAMON BLANCO ET AL., PETITIONERS, VS. THE BOARD OF MEDICAL EXAMINERS, THE SECRETARY-TREASURER OF THE BOARD OF MEDICAL EXAMINERS, AND THE SECRETARY OF THE INTERIOR, RESPONDENTS.

G.R. No. L-22911. September 23, 1924

Ponente: MALCOLM, J.

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MALCOLM, J.:

Fifteen participants in the last medical examinations, in a complaint in mandamus, ask the court to order the Secretary of the Interior to confirm the final results of the examinations. The Attorney-General on behalf of the respondents has filed an answer. The petitioners, in turn, have demurred to the answer.

The petitioners, along with other qualified persons, took the examinations prescribed by law for a physician's certificate on May 13 to 16, 1924, and apparently passed the same. The Board of Medical Examiners thereupon submitted the final results of the examinations to the Department Head for confirmation. But the Secretary of the Interior held the matter in abeyance, pending the outcome of an investigation conducted by the Under-Secretary of the Interior. The finding of the special investigator was that the questions on the subjects of the medical examinations held on May 13 to May 16, 1924, had leaked out before said dates. Following the recommendation of the Under-Secretary, the Secretary of the Interior annulled the results of the examinations.

The last paragraph of section 776 of the Medical Law, as found in the Administrative Code, and as last amended by section 10 of Act No. 3111, provides that "The results of all examinations (medical), including the average and grades obtained by each applicant, shall be submitted for confirmation to the Department Head (the Secretary of the Interior) and made known to the respective candidates within one month after the date of the examination." Is this official duty discretionary or ministerial in nature?

It is elementary law that the writ of mandamus will not issue to control or review the exercise of the discretion of a public officer. Where the law imposes upon a public officer the right and duty to exercise judgment, in reference to any matter to which he is called upon to act, it is his judgment that is to be exercised and not that of the court. "* * * If the law imposes a duty upon a public officer, and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. * * *" (Lamb vs. Phipps [1912], 22 Phil., 456; Gonzalez vs. Board of Pharmacy [1911], 20 Phil., 367; Code of Civil Procedure, sec. 515; Mechem on Public Officers, pp. 631-633.)

Under the plain terms of the Medical Law, it is the discretionary duty of the Secretary of the Interior to confirm or not to confirm—to confirm or, as in this instance, to annul—the report of the medical examiners. To hold that the Secretary of the Interior must in all cases confirm, shutting his eyes to any irregularity, no matter how glaring, would convert him into an automatic rubber stamp for imprinting the requisite approval. That the Department Secretary who appoints the members of the Board of Medical Examiners, who has the Board under his administrative supervision, and who has the power of confirmation of the report of the Board, cannot do more

than perform the clerical duty of approving the results of the examinations, under any and all circumstances, is too specious an argument to merit serious consideration. It is likewise elementary law that mandamus may issue to correct abuse of discretion, if the case is otherwise proper. But here, the record discloses that the Secretary of the Interior did not exercise the power granted to him with manifest injustice, or with gross abuse. Quite otherwise.

The manly course for the petitioners to pursue, the wholesome remedy at their command, is to submit anew to examinations free from all hint of carelessness, collusion, or fraud.

The complaint is dismissed with costs. So ordered.

Johnson, Street, Avancena, Villamor, Ostrand, and Romualdez, JJ., concur.

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