

June 12, 2002

The Honorable Terry L. Hord  
Hardin County Prosecuting Attorney  
One Courthouse Square  
Suite 50  
Kenton, Ohio 43326-1575

SYLLABUS:

2002-015

1. A physician whose certificate to practice medicine is suspended is not “licensed to practice as a physician” during the period of suspension for purposes of R.C. 313.02. Therefore, a physician whose certificate to practice medicine has been suspended for any part of the two-year period immediately preceding an election for the office of county coroner is ineligible to be a candidate for coroner at that election, and the county board of elections may declare invalid his statement of candidacy and nominating petition.
2. A physician is not “in good standing” in his profession for purposes of R.C. 313.02 during the time his certificate to practice medicine is subject to probation. Therefore, a physician whose certificate would be subject to probation at the time he would assume the office of county coroner if elected thereto is ineligible to be a candidate for coroner at that election, and the county board of elections may declare invalid his statement of candidacy and nominating petition.

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OPINION NO. 2002-015

The Honorable Terry L. Hord  
Hardin County Prosecuting Attorney  
One Courthouse Square  
Suite 50  
Kenton, Ohio 43326-1575

Dear Prosecutor Hord:

You have asked whether the former Hardin County coroner is eligible to be a candidate for election to the office of county coroner at the November 2002 general election in light of the following facts.

The former coroner, who was serving a term of office beginning in January 2001, was suspended from the practice of medicine from December 22, 2001 through April 20, 2002 by the State Medical Board as a result of his misconduct as a physician. *See generally* R.C. 4731.22(B). R.C. 313.02(A) requires that, in order to be eligible to serve as coroner, a physician must be “in good standing in [his] profession,” and when the former coroner’s certificate to practice medicine was suspended, he was considered to be no longer “in good standing.” He was, accordingly, deemed to have vacated his office as of the first day of his suspension since he had failed to maintain the requisite qualifications for office.<sup>1</sup> The board of county commissioners appointed an acting coroner pursuant to R.C. 305.02(F), and the county central committee of the outgoing coroner’s political party proceeded to appoint a person to fill the resulting vacancy pursuant to R.C. 305.02(B). This appointee will stand as the party’s nominee

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<sup>1</sup> An officer who fails to maintain the qualifications statutorily required for office will be deemed to have resigned. *See State ex rel. Wilson v. Gulvas*, 63 Ohio St. 3d 600, 604, 589 N.E.2d 1327, 1330 (1992) (“noncompliance with a statutory prerequisite for holding office is a disqualification by operation of law and automatically creates a vacancy”); *State ex rel. Boda v. Brown*, 157 Ohio St. 368, 105 N.E.2d 643 (1952); *State of Ohio ex rel. v. Orr*, 61 Ohio St. 384, 56 N.E. 14 (1899) (an officer must be qualified to hold office not only when he is elected, but throughout his term of office); *Zeigler v. Village of Sycamore*, 52 Ohio App. 2d 247, 369 N.E.2d 1058 (Wyandot County 1977); 1989 Op. Att’y Gen. No. 89-060. *See also* R.C. 305.03(A) (“[w]henver any county officer fails to perform the duties of office for ninety consecutive days ... the office shall be deemed vacant”).

at the November 2002 election to fill the former coroner's unexpired term as provided in R.C. 305.02(A).

The former coroner has filed with the county board of elections a statement of candidacy and nominating petition to be an independent candidate for election to the office of county coroner at the November 2002 election. Although his suspension had expired by the time he filed for office,<sup>2</sup> the State Medical Board has ordered that he serve a term of probation of at least five years following completion of his suspension. *See generally* R.C. 4731.22(K); R.C. 4731.222. Therefore, he was on probation at the time he filed his nominating petition, and he will be subject to probation for the duration of the term of office, which expires in January 2005. You wish to know whether, under these facts, the former coroner is eligible to be a candidate for the office of county coroner at the November 2002 election. If he is ineligible to be a candidate for coroner, the county board of elections may declare invalid his statement of candidacy and nominating petition.<sup>3</sup>

We note first, that a person is not eligible to be a candidate for elective office if he will not be qualified to assume that office if elected. *See State ex rel. Flynn v. Board of Elections*, 164 Ohio St. 193, 200, 129 N.E.2d 623, 628 (1955), *overruled in part on other grounds by State ex rel. Schenck v. Shattuck*, 1 Ohio St. 3d 272, 439 N.E.2d 891 (1982) (“one who would be

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<sup>2</sup> Any person who wishes to become an independent candidate for an office for which candidates are nominated at a primary election, which includes all county offices, must file a statement of candidacy and nominating petition no later than four p.m. of the day before the primary election. R.C. 3513.257. In 2002, the filing deadline for independent candidates was May 6th. *See also* R.C. 3513.261.

<sup>3</sup> R.C. 3513.262 authorizes a county board of elections to determine matters affecting the validity or invalidity of a filer's petition papers, and R.C. 3501.39 requires a board of elections to accept a petition, unless “[t]he candidate's candidacy or the petition violates the requirements of this chapter, Chapter 3513. of the Revised Code, or any other requirements established by law.” R.C. 3501.39(A)(3). *See also* R.C. 3501.11(K) (each board of elections shall “[r]eview, examine, and certify the sufficiency and validity of petitions and nomination papers”); *State ex rel. Keefe v. Eyrich*, 22 Ohio St. 3d 164, 489 N.E.2d 259 (1986) (upholding the refusal of a board of elections to certify the candidacy of a person who filed for the office of appeals court judge, on the grounds he was seventy years old and thus could not, pursuant to Ohio Const. art. IV, § 6(C), qualify for office); *Wiss v. Cuyahoga County Bd. of Elections*, 61 Ohio St. 2d 298, 401 N.E.2d 445 (1980) (a board of elections has authority, *sua sponte*, to disqualify a potential candidate who does not meet the statutory qualifications for office); *State ex rel. Flynn v. Board of Elections*, 164 Ohio St. 193, 129 N.E.2d 623 (1955), *overruled in part on other grounds by State ex rel. Schenck v. Shattuck*, 1 Ohio St. 3d 272, 439 N.E.2d 891 (1982) (a board of elections has the authority to determine whether one who has filed to be a candidate for office possesses the qualifications for office); 1956 Op. Att'y Gen. No. 6919, p. 601.

ineligible to hold a public office has no right to be a candidate for election thereto” [citation omitted], and “the board of elections has statutory authority to determine whether the relator, if elected, could successfully assume the office he seeks”). *See also, e.g., Cicchino v. Luse*, No. C-2-99-1174, 2000 U.S. Dist. LEXIS 10314, at \*27 (S.D. Ohio 2000) (the State may require candidates for the office of sheriff to obtain a certificate of training *prior* to being placed on the ballot rather than at the time of election pursuant to R.C. 311.01, since “Ohio has an important interest in policing its ballot and minimizing frivolous candidacies”); *State ex rel. Keefe v. Eyrich*, 22 Ohio St. 3d 164, 489 N.E.2d 259 (1986). R.C. 313.02(A) requires a person to have been “licensed to practice as a physician in this state for a period of at least two years immediately preceding election,” as well as be “in good standing” in his profession, in order to be eligible to hold the office of coroner.<sup>4</sup> In this instance, the former coroner fails to meet these qualifications for two reasons, and is thus ineligible to be a candidate for the office of coroner in the November 2002 election.

First, the former coroner will not have been “licensed to practice as a physician in this state for a period of at least two years immediately preceding election,” because his license to practice medicine was under suspension during part of that two-year period. A physician’s license is “the legal authorization from the state medical board to practice medicine and surgery ... in Ohio.” 11 Ohio Admin. Code 4731-10-01(A)(1). *See* R.C. 4731.34 (defining the “practice of medicine”). A “certificate of registration” is “the document issued by the state medical board which evidences an individual’s license to practice medicine and surgery ... in Ohio during a specific registration period.” 11 Ohio Admin. Code 4731-10-01(A)(2). A physician whose certificate has been suspended is prohibited from practicing medicine for the term of the suspension, R.C. 4731.41, and is subject to criminal liability if he does so, R.C. 4731.99.<sup>5</sup> A

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<sup>4</sup> R.C. 313.02(A) states in part: “No person shall be eligible to the office of coroner except a physician who has been licensed to practice as a physician in this state for a period of at least two years immediately preceding election or appointment as a coroner, and who is in good standing in the person’s profession.” *See Vargo v. Travelers Insurance Co., Inc.*, 34 Ohio St. 3d 27, 30, 516 N.E.2d 226, 229 (1987) (“[t]he coroner is a medical expert rendering an expert opinion on a medical question”); *State v. Cousin*, 5 Ohio App. 3d 32, 449 N.E.2d 32 (Seneca County 1982) (discussing the expert medical determinations made by a coroner). *Cf. State ex rel. Blair v. Balraj*, 69 Ohio St. 3d 310, 631 N.E.2d 1044 (1994) (a coroner is not limited to describing only physical or physiological facts). *See also* 11 Ohio Admin. Code 4731-14-01(A) (“[o]nly an individual holding a current certificate to practice medicine or surgery or osteopathic medicine and surgery issued under section 4731.14 of the Revised Code, can pronounce a person dead”).

<sup>5</sup> R.C. 4731.41 states, in part: “No person shall practice medicine and surgery, or any of its branches, after the person’s certificate has been revoked, or, if suspended, during the time of such suspension.” Any person who violates R.C. 4731.41 is guilty of a felony of the fifth degree

person whose certificate has been suspended thus has no authority, or “license,” to practice as a physician.

In this instance, the former coroner’s certificate to practice as a physician in Ohio was suspended for a period of four months within the two years prior to the November 2002 election. He had no legal authorization, or license, to practice medicine during that time. Therefore, he cannot be considered as having been “licensed to practice as a physician” for the required two-year period prior to election.

Secondly, the former coroner would not be “in good standing in [his] profession” at the time he would assume office if elected thereto, because he will still be on probation at the time the newly elected coroner assumes office in January 2003, and he will continue to be on probation for the duration of the term of office, which expires in January 2005. Although there is no statutory, judicial, or administrative definition of the phrase, “in good standing,” for purposes of R.C. 313.02 or R.C. Chapter 4731, a representative of the State Medical Board has stated that the Board considers a physician to be in good standing only if he holds a clear and unrestricted certificate to practice, and does not regard a physician whose certificate is subject to probation to be in good standing. *Cf.* 1994 Op. Att’y Gen. No. 94-011 (the Ohio Supreme Court considers an attorney to be in good standing whenever he is not subject to any disciplinary action, he is in compliance with continuing legal education requirements, and he is registered in compliance with court rule).

An examination of the order of the State Medical Board disciplining the former coroner is also instructive. The order subjects his certificate to “probationary terms, conditions, and limitations,” after completion of his suspension. Under the order’s terms of probation, he must complete a course dealing with the prescribing of controlled substances, and he is prohibited from prescribing certain controlled substances. He must appear for interviews before the Board every three months, and submit quarterly declarations of compliance with the conditions of probation. The order provides that upon successful completion of probation, his certificate “will be fully restored.”

Thus, the former coroner is prohibited, during his period of probation, from fully exercising the authority of a physician. Interpreting the requirement that a physician be “in good standing” in his profession as meaning that a physician must hold an unrestricted certificate to practice medicine, and considering the probationary restrictions that have been placed on the former coroner’s ability to practice medicine, lead us to conclude that he is not in good standing in his profession during such time as his certificate is subject to probation.

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on a first offense and a felony of the fourth degree on each subsequent offense. R.C. 4731.99(A). *See also* R.C. 4731.341 (injunction against the unauthorized practice of medicine).

Therefore, the person in question would not be qualified to assume the office of coroner if elected thereto at the November 2002 election, and he is, accordingly, ineligible to be a candidate for coroner at that election. The board of elections has the authority to declare invalid his statement of candidacy and nominating petition to be an independent candidate for the office of county coroner at the November 2002 election.

It is, therefore, my opinion, and you are hereby advised that:

1. A physician whose certificate to practice medicine is suspended is not “licensed to practice as a physician” during the period of suspension for purposes of R.C. 313.02. Therefore, a physician whose certificate to practice medicine has been suspended for any part of the two-year period immediately preceding an election for the office of county coroner is ineligible to be a candidate for coroner at that election, and the county board of elections may declare invalid his statement of candidacy and nominating petition.
  
2. A physician is not “in good standing” in his profession for purposes of R.C. 313.02 during the time his certificate to practice medicine is subject to probation. Therefore, a physician whose certificate would be subject to probation at the time he would assume the office of county coroner if elected thereto is ineligible to be a candidate for coroner at that election, and the county board of elections may declare invalid his statement of candidacy and nominating petition.

Respectfully,

BETTY D. MONTGOMERY  
Attorney General