

guidance to the boards. An interpretation that is too strict could exclude applicants who can effectively communicate with patients but who stutter, or have foreign accents or less than perfect diction. Such an interpretation is not barred by the language of the bill, yet it would discriminate against the disabled and the foreign-born and would have no rational relationship to the purpose of the bill. In addition, the concept of "oral competency" is not one that would lend itself to rule-making, and thus would be applied on a case-by-case basis, increasing the risk of discriminatory administration.

The boards would also apparently have the discretion to determine what constitutes a "recognized, English-speaking, professional school", raising the possibility that a board could decide to exclude foreign schools that even though they teach some or all of their classes in English. 5/ Finally, the law is not clear whether graduation from an English-speaking school is conclusive proof of competency or whether it is merely a method of proof which a board, in its discretion, may accept. If the latter interpretation is correct, the boards would have broad discretion to single out certain groups, for example those with hispanic surnames, and require further proof of oral competency.

It has long been recognized that although a law itself may

"be fair on its face, and impartial in appliance, yet if it is applied and administered by public authorities with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the constitution." Yick Wo v. Hopkins, 118 U.S. 356, 373-374 (1886).

In our view, the dangers inherent in the broad discretion given to the boards raise grave doubts about the constitutionality of this bill. However, in the absence of a record, and with no case law on point as guidance, we cannot say that the bill is clearly unconstitutional.

Very truly yours,
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1/ Each of these cases, however, involves a decision by a governmental entity to conduct its business in English. While, as a practical matter that decision requires those who deal with the government to have some knowledge of English, or at least to know someone who does, it does not present the dangers of discriminatory administration raised by a requirement of "oral competency" in English. The potential problems raised by administration of House Bill 573 are discussed later.