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NORTH CAROLINA LAW REVIEW

---

Volume 23 | Number 2

Article 6

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2-1-1945

# Comments on a Phase of Legal Control of Medical Practice

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## Recommended Citation

Arthur B. Weldon, *Comments on a Phase of Legal Control of Medical Practice*, 23 N.C. L. REV. 129 (1945).

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*The*  
**North Carolina  
 Law Review**

VOLUME 23

FEBRUARY, 1945

NUMBER 2

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## NOTES AND COMMENTS

**Comments on a Phase of Legal Control of Medical Practice**

There can be no doubt that the problems of medical charlatanism and unlicensed medical practice are pressing ones, and that the conditions giving rise to them vitally affect the public health. A recent article<sup>1</sup> has made a substantial contribution to their solution by suggesting to public prosecutors and other interested persons the possibilities and limitations of the various legal remedies in this field. The present writer feels, however, that it is to be regretted that, in so doing, the article has classified among the evils to be eliminated the competent, public-spirited, and law abiding profession of osteopathy.

It is submitted that certain expressions and statements in the article

<sup>1</sup> Heilman, *Legal Control of Medical Charlatanism* (1943) 22 N. C. L. Rev. 23.

in question do an injustice to the osteopathic profession, by implying that many if not all osteopathic physicians are imposters, engaged in some way in unlicensed or unlawful practice, and that as a class they are inadequately prepared by education and training to treat the sick. It is felt that, were readers of the article acquainted with the facts as to the educational institutions and processes of the osteopathic profession, and aware of the legal status of its members as licensed practitioners in the several states, they would recognize that these implications are erroneous.

In the third paragraph of the article<sup>2</sup> it is stated that ". . . the health and well being of the general public will be better promoted if there be prohibited the most flagrant forms of charlatanism foisted on the people by self-styled experts with little or no scientific training or even elementary knowledge of anatomy, biology, chemistry, or bacteriology." This statement does not specifically mention osteopathy but subsequent paragraphs make it clear to the reader that osteopathy and its practitioners are intended to be included. The writer has personal knowledge that there are six colleges of osteopathy in the United States approved and recognized by the American Osteopathic Association (which is recognized by most state licensing boards and by the United States Office of Education as the official accrediting agency for osteopathic colleges); and that all of them are non-profit institutions organized for the promotion of the public health through medical education and research, teaching a full four-year course embracing all the subjects taught in reputable and recognized schools granting the M.D. degree, including, of course, the four subjects mentioned in the above quotation.<sup>3</sup>

The classroom and laboratory time devoted to the so-called "medical" subjects in these osteopathic schools is approximately the same as that devoted to such subjects in American medical schools generally. In addition to their full curricula of "medical" subjects, the osteopathic colleges provide approximately 800 hours of instruction in osteopathic principles and practice during the four-year course, bringing the total class room and laboratory hours to about 800 hours in excess of the average of American medical schools. Each of these six osteopathic colleges requires as an entrance prerequisite two years of university or college training, including at least six semester hours each of English, physics and biology, and 12 semester hours of chemistry. The faculties of these osteopathic schools are composed of Doctors of Osteopathy,

<sup>2</sup> *Ibid.*

<sup>3</sup> *People v. Schaeffer*, 310 Ill. 574, 575, 142 N. E. 248, 249 (1924) (Examples of courses taught at the American School of Osteopathy, Kirksville, Mo., in 1911-15. Courses in drug therapeutics have since been added, and in fact the subject was taught then as a part of the courses in principles and practice.); *cf. People v. Graham*, 311 Ill. 92, 142 N. E. 449 (1924).

Doctors of Medicine, and holders of other advanced professional and scientific degrees in their particular fields. Attached to or connected with each of these colleges is a teaching hospital where upper classmen, graduate students and osteopathic internes observe and take part in the diagnosis and treatment of all conditions of disease and injury. Graduate training in the medical specialties is provided, and research is carried on within the limitations imposed by war-time conditions and by the relative lack, as yet, of philanthropic and government support of these institutions. Osteopathic physicians trained in these schools are serving as public health officers and employees in many cities, counties, and states, and as commissioned officers in the United States Public Health Service.

It seems inaccurate to describe osteopathic physicians thus trained and recognized as ". . . self-styled experts with little or no scientific training or even elementary knowledge of anatomy, biology, chemistry or bacteriology,"<sup>4</sup> or as is done in the following passage from the fifth paragraph of the article: ". . . the unorthodox healer who diagnoses and then attempts to cure by his own pseudo-scientific or cultist method."<sup>5</sup>

The next paragraph of the article contains the following statement: "From the time of Hippocrates to the present the regularly licensed physicians and surgeons have contested for public patronage with the faith healers, osteopaths, napropaths, naturopaths, and other cultists and unorthodox healers of all kinds."<sup>6</sup> Of course, osteopathic practitioners are regularly licensed in every state of the Union and in the District of Columbia, as indeed it is stated by the article. They may also describe themselves and be referred to properly as "physicians" or "physicians and surgeons" as an examination of applicable judicial decisions<sup>7\*</sup> and statutes will indicate.

In twenty-eight states, the practice acts under which Doctors of Osteopathy are licensed describe persons licensed thereunder as "physicians" or "physicians and surgeons."<sup>8</sup> In addition, there are ten states

<sup>4</sup> *Supra*, note 1.

<sup>5</sup> *Id.* at 24.

<sup>6</sup> *Ibid.*

<sup>7\*</sup> *Howerton v. Dist. Col.*, 289 Fed. 628 (C. C. D. C. 1923) (Held that the defendant, an osteopathic physician, came within the clause of the Podiatry Act exempting "regular practicing physicians or surgeons."); *Towers v. Glider & Levin*, 101 Conn. 169, 125 Atl. 366 (1924) (An osteopathic physician was held to be a "competent physician or surgeon" under the Conn. Workmen's Comp. Act.); *People ex rel. Gage v. Siman*, 278 Ill. 256, 115 N. E. 817 (1917) (An osteopathic physician was held entitled to be registered under the Vital Statistics Act as a "legally qualified physician."); *Bandel v. Dept. of Health*, 193 N. Y. 133, 85 N. E. 1067 (1908) ("physician"); *State ex rel. Kester v. North*, 136 Ohio St. 523, 26 N. E. (2d) 1020 (1940) ("licensed physician"); *Commonwealth v. Cohen*, — Pa. Super. —, 15 A. (2d) 730 (1940) ("licensed physician"); *In re Opinion of the Justices*, 42 R. I. 249, 107 Atl. 102 (1919) ("physicians registered to practice"); *State ex rel. Walker v. Dean*, 155 Wash. 383, 284 Pac. 756 (1930) (Held that one licensed to practice osteopathy and surgery is "a legally qualified physician" within the meaning of the statute providing for appointment of city health officers.).

<sup>8</sup> ARIZ. CODE ANN. (1939) §§67-2104, 67-2111, 67-2112; CAL. GEN. LAWS

in which osteopathic physicians receive the same license as do the M.D.'s, six of which are not among the group of twenty-eight referred to. In these six states, also, osteopathic physicians may fairly be said to have, by virtue of their license, the right to use the title "physician and surgeon."

Many statutes relating to the public health, such as vital statistics acts, laws governing the control of infectious diseases, laws regulating the distribution, sale and use of drugs, narcotics, prophylactics and the like recognize Doctors of Osteopathy as "physicians" either by express definition or by inclusion generally.<sup>9</sup> In the ten states where the medical and osteopathic physicians receive the same license, express recognition of the latter in public health statutes is usually not found, because it is unnecessary; but in these states Doctors of Osteopathy are eligible to perform all public health functions and occupy all public health offices, generally speaking.

In the course of the article, the author made the following statement: "The staidness, conservativeness, and high professional standards of a learned profession are handicapped in coping with the blatant, self-advertising methods of the charlatan, whose appeal is particularly to the emotions of the ignorant and hopelessly afflicted."<sup>10</sup> Again, osteopathy is not mentioned, but, by clearest inference from the rest of the article, it is intended to be included. I should like to quote at some length from the Code of Ethics of the American Osteopathic Association<sup>11</sup> as bearing upon this point:

(Deering, 1944) act 5727, §§1, 2, 3; Cal. Business and Professions Code (Deering, 1944) §2137; CONN. GEN. STAT. (1930) §2754; DEL. REV. CODE (1935) §931; F. S. A. (1943) §1804; Idaho Code Ann. (1932) §§53-1801, 53-1804; IND. STAT. ANN. (Burns, 1933) §63-1305; IOWA CODE (Reichmann, 1939) §2554.07; ME. REV. STAT. (1930) c. 21, §70; MICH. STAT. ANN. (Henderson, 1938) §14.574; MINN. STATS. (1941) §148.12; MO. STAT. ANN. (1939) §10046; NEV. COMP. LAWS (Hill-  
yer, 1929) §5001; N. J. STAT. ANN. (1940) §45-9-5.1; N. M. STAT. ANN. (Court-  
right, 1941) §51-809; N. C. GEN. STAT. (1943) §90-134; N. D. COMP. LAWS ANN. (1933) c. 202, §§11, 12, 13; OHIO CODE ANN. (1939) §1274; OKLA. STAT. ANN. (1941) tit. 59, §633; ORE. COMP. LAWS ANN. (1939) §54-824; PA. STAT. ANN. (Purdon, 1941) tit. 63, §268; R. I. GEN. LAWS ANN. (1938) tit. XVI, c. 275, §10; S. D. CODE (1939) §27.0401; S. D. LAWS (1943) c. 108, §1; TENN. CODE (Wil-  
liams, 1943) §§7004, 7006; TEX. ANN. REV. CIV. STAT. (Vernon, 1925) art. 4510; UTAH CODE ANN. (1943) §§79-9-3, 79-9-6, 79-9-7; WASH. REV. STAT. ANN. (Remington, 1933) 10072; W. VA. CODE ANN. (Michie & Sublett, 1943) §2984.

<sup>9</sup> *E.g.*, ARK. DIG. (Supp. 1944) Part II, *Drugs* §1 (prophylactics); CONN. GEN. STAT. (Supp. 1939) §1315e (premarital examination); IOWA CODE (Reichmann, 1939) §2181(5) (State Dept. of Health), §3169.01(2) (narcotics); MICH. STAT. ANN. (Henderson, 1937) §§18.971-18.1028 (liquor), §18.1007 (narcotics); MICH. STAT. ANN. (Henderson, Supp. 1944) §16.455(k) (Social Security); REV. STAT. MO. (1939) §§9832(2) & (8) (narcotics); ORE. COMP. LAWS ANN. (1939) §58-561 (prophylactics); UTAH REV. STAT. ANN. (1943) §79-12a-1 (prophylactics); ACTS OF VT. (1941) No. 65, §2 (premarital examination), No. 103, §1 (prenatal examination).

<sup>10</sup> Heilman, *Legal Control of Medical Charlatanism* (1943) 22 N. C. L. Rev. 23.

<sup>11</sup> DIRECTORY OF OSTEOPATHIC PHYSICIANS, 1944, pp. 260-263 (Published by the American Osteopathic Association, Chicago.).

CHAPTER II.—THE DUTIES OF PHYSICIANS TO EACH OTHER AND  
TO THE PROFESSION AT LARGE

Article I.—Duties for the Support of Professional Character

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Sec. 6. (a) It shall be considered unethical for a physician to advertise in any manner, regardless of whether there is any consideration represented as payment for such advertisement or not, except as hereinafter provided:

When sanctioned by universally accepted local custom and with specific approval and under mutual agreement with the A. O. A. recognized divisional osteopathic organization concerned, it may be considered ethical to use in printed publications a simple, dignified statement by a general practitioner or institution engaged in general practice; which statement shall list only the name, profession, address, telephone number, office hours, and other necessary information, expressly permitted, such as listing the organs or class of cases, but not the specific diseases treated by the individual or group who limits practice to a specialty only.

(b) It is not compatible with honorable standing in the profession for any individual practitioner or institution to pay, directly or indirectly, for advertising time on the radio, nor for any osteopathic society, osteopathic group, or osteopathic institution, nor for any member of the profession, to advertise professional services or solicit patients over the radio.

(c) It shall be considered unethical for a physician to use literature of any kind for the education of the general public of the facts concerning osteopathy, except as hereinafter provided:

(1) Educational literature as referred to in the above paragraph may be used provided it is published for that purpose by the A. O. A., or if published by any other concern or organization it shall have the approval of the Committee on Ethics and Censorship previous to its use by any physician or group.

(d) Ethical conduct in either advertising or education precludes such practices as the following:

(1) Inviting the attention of persons afflicted with particular diseases.

(2) Publishing cases in the daily press or elsewhere.

(3) Presenting cases or reports of cases over the radio.

(4) Listing oneself as a specialist when he is really a general practitioner who has developed special aptitude for a sideline.

(5) Promising radical cures.

(6) Advertising free examinations (except in free clinics).

(7) Display advertising of unusual varieties.

(8) Or in any other way trespassing against the dictates of honesty, good judgment, fairness and professional decency and the tenets of the Golden Rule.

Sec. 7. It shall be considered unethical for a physician to hold himself out as a specialist in more than one specialty.

A violation of any of these provisions, as of any other provision of the Code of Ethics, subjects the offending physician, upon complaint to an investigation by the Committee on Ethics and Censorship of the

A. O. A., to censure or expulsion from membership, or both, by the Board of Trustees of the A. O. A. Of the approximately 11,000 practicing osteopathic physicians in the United States, about two-thirds belong to the American Osteopathic Association. In addition, some 1,800 physicians, not members of the A. O. A., are members of state osteopathic associations, having similar codes of ethics and similar provisions for discipline. To be sure, there are renegades in the osteopathic profession, just as there are in every other profession and trade, who cannot be reformed, either by private or by governmental sanctions.

Although there are many other expressions in this otherwise excellent article which are unfortunate when considered in reference to the osteopathic profession, the present remarks will be confined to commenting upon two more statements appearing therein. One is as follows: ". . . these two healing cults (osteopathy and chiropractic) have steadily intruded themselves into the field of medicine."<sup>12</sup> The other reads: "But it is when the osteopath and chiropractor fail to stay in the realm of 'hand manipulation and kneading' and encroach on the licensed physician's prerogative to prescribe and administer drugs and that of the surgeon to use the knife that these cultists and the 'regulars' come into headlong conflict."<sup>13</sup>

I understand the meaning of "prerogative" to be "that which one has a legal right to do"; and the reader would fairly infer from the article as a whole that by "licensed physician" it has reference to holders of the degree M.D. or M.B. who are licensed by government authority to practice their profession, although, as indicated above, it is thought that this view of the meaning of the term "licensed physician" is erroneous.

With these considerations in mind, let us examine what osteopathic physicians "have a legal right to do" in the practice of their profession in the several states, with particular reference to the prescription and administration of drugs and the use of surgical instruments. Osteopathic physicians are licensed to practice *medicine and surgery*, on the same terms as allopathic physicians and with no limitations whatsoever as to practice rights, in the following states: California,<sup>14</sup> Colorado,<sup>15</sup> District of Columbia,<sup>16</sup> Kentucky,<sup>17</sup> Massachusetts,<sup>18</sup> New Hampshire,<sup>19</sup> New Jersey,<sup>20</sup> Ohio,<sup>21</sup> Texas,<sup>22</sup> and Wyoming.<sup>23</sup> In Connecti-

<sup>12</sup> Heilman, *Legal Control of Medical Charlatanism* (1943) 22 N. C. L. REV. 23, 25.

<sup>13</sup> *Ibid.*

<sup>14</sup> CAL. GEN. LAWS (Deering, 1944) act 5727, §§1, 2, 3; CAL. BUSINESS AND PROFESSIONS CODE (Deering, 1944) §2137.

<sup>15</sup> COL. STAT. ANN. (Michie, 1935) c. 109, §6.

<sup>16</sup> D. C. CODE (1940) §§2-109, 2-118, 2-120.

<sup>17</sup> KY. REV. STAT. (Cullen, 1943) §§311.010(2a), 311.030, 311.060.

<sup>18</sup> MASS. ANN. LAWS (Michie, 1942) c. 112, §10.

<sup>19</sup> N. H. REV. LAWS (1942) c. 250, §12.

<sup>20</sup> N. J. STAT. ANN. (1939) §45:9-15.

<sup>21</sup> OHIO GEN. CODE ANN. (Page, 1937) §1274.

<sup>22</sup> TEX. ANN. REV. CIV. STAT. (Vernon, 1940) art. 4501.

<sup>23</sup> WYO. REV. STAT. ANN. (Courtright, 1931) §86-104.

cut they are eligible to receive a license to practice medicine and surgery after a special examination, which examination requires no additional educational qualifications beyond those required for the osteopathic license.<sup>24</sup> Osteopathic physicians have unlimited, or substantially unlimited, practice rights in the following states: Arizona,<sup>25</sup> Delaware,<sup>26</sup> Florida,<sup>27</sup> Maine,<sup>28</sup> Michigan,<sup>29</sup> Missouri,<sup>30</sup> Nevada,<sup>31</sup> New Mexico,<sup>32</sup> Oklahoma,<sup>33</sup> Oregon,<sup>34</sup> Pennsylvania,<sup>35</sup> Rhode Island,<sup>36</sup> Tennessee,<sup>37</sup> Utah,<sup>38</sup> Vermont,<sup>39</sup> Virginia,<sup>40</sup> Washington,<sup>41</sup> and West Virginia.<sup>42</sup>

Osteopathic physicians are legally authorized to prescribe and administer some or all drugs in the following states (in addition to all the states listed above): Indiana,<sup>43</sup> Iowa,<sup>44</sup> Minnesota,<sup>45</sup> Nebraska,<sup>46</sup> New York,<sup>47</sup> North Dakota,<sup>48</sup> and South Dakota.<sup>49</sup> They are licensed to practice all forms of surgery in Indiana,<sup>50</sup> Iowa,<sup>51</sup> and Wisconsin,<sup>52</sup> as well as in the first two groups of states listed above. They are licensed to practice minor surgery in Alabama,<sup>53</sup> Arkansas,<sup>54</sup> Minnesota,<sup>55</sup> New York,<sup>56</sup> North Dakota,<sup>57</sup> South Carolina,<sup>58</sup> and South Dakota.<sup>59</sup>

<sup>24</sup> CONN. GEN. STAT. (1930) §2754.

<sup>25</sup> ARIZ. CODE ANN. (1939) §§67-2101, 67-2115.

<sup>26</sup> DEL. REV. CODE (1935) §931; Op. Atty. Gen., March 13, 1939.

<sup>27</sup> F. S. A. (1943) §§459.01, 459.07. <sup>28</sup> ME. REV. STAT. (1930) c. 21, §64.

<sup>29</sup> MICH. STAT. ANN. (Henderson, 1937) §14.574.

<sup>30</sup> REV. STAT. MO. (1939) §10044.

<sup>31</sup> NEV. COMP. LAWS (Hillyer, 1929) §§4991, 5001.

<sup>32</sup> N. M. STAT. ANN. (Courtright, 1941) §51-809.

<sup>33</sup> ORLA. STAT. ANN. (1941) tit. 59, §§630, 633.

<sup>34</sup> ORE. COMP. LAWS ANN. (1939) §54-821.

<sup>35</sup> PA. STAT. ANN. (Purdon, 1941) tit. 63, §§266, 268.

<sup>36</sup> R. I. ACTS. 970 RESOLVES (1940) Ch. 889.

<sup>37</sup> TENN. CODE ANN. (Michie, 1941) §7007.

<sup>38</sup> UTAH CODE ANN. (1943) §79-9-3(2) (b).

<sup>39</sup> VT. PUB. LAWS (1933) §7477.

<sup>40</sup> VA. CODE ANN. (Michie, Sublett, & Stedman, Supp. 1944) §1609(c).

<sup>41</sup> WASH. REV. STAT. ANN. (Remington, 1933) §§10056, 10069.

<sup>42</sup> W. VA. CODE ANN. (Michie, Sublett, & Stedman, 1943) §2984.

<sup>43</sup> IND. STAT. ANN. (Burns, 1933) §63-1316.

<sup>44</sup> IOWA CODE (Reichmann, 1939) §2554.08.

<sup>45</sup> MINN. STAT. (1941) §148.12.

<sup>46</sup> NEB. COMP. STAT. (1922) §8174. This section granted osteopathic physicians the right to use anaesthetics, antiseptics, antidotes and narcotics in specific language. This specific language has since been removed by amendment, but the right to use these drugs was held to survive the amendment in the case of *State ex rel. Johnson v. Wagner & Gable*, 139 Neb. 471, 297 N. W. 906 (1941).

<sup>47</sup> N. Y. EDUCATION LAW §1262.

<sup>48</sup> N. D. SESS. LAWS (1933) c. 202, §5.

<sup>49</sup> S. D. CODE (1939) §27.0405.

<sup>50</sup> IND. STAT. ANN. (Burns, 1933) §63-1316.

<sup>51</sup> IOWA CODE (Reichmann, 1939) §2554.07.

<sup>52</sup> WIS. STAT. (Brossard, 1941) §147.17.

<sup>53</sup> ALA. CODE (1940) tit. 46, §259.

<sup>54</sup> ARK. DIG. STAT. (Pope, 1937) §10766.

<sup>55</sup> MINN. STAT. (Henderson, 1941) §148.12.

<sup>56</sup> N. Y. EDUCATION LAW §1262.

<sup>57</sup> N. D. SESS. LAWS (1933) c. 202, §1, 5.

<sup>58</sup> S. C. CODE (1942) §§5231-33.

<sup>59</sup> S. D. CODE (1939) §27.0405.



It is believed that the foregoing analysis represents correctly the practice rights of the osteopathic physicians presently being licensed in the states mentioned. It should be noted, however, that there are in some of these states groups of older practitioners licensed under earlier laws whose rights are more limited than are the practice rights of the more recent licensees. Nevertheless, it can readily be perceived that in 38 states and the District of Columbia it is not the sole "prerogative" of physicians who hold the degree M.D. to prescribe and administer drugs and to practice surgery. It is not felt out of place to observe here that the educational training and background of osteopathic physicians practicing in states where their practice rights are limited by law is precisely the same as that of osteopathic physicians in the unlimited practice states; in other words, the only disability of the former group is one imposed by archaic laws and does not indicate inferior professional competence. It is not generally known, perhaps, that almost invariably any proposed modernization of these laws is vigorously, albeit sometimes hypocritically, opposed by organized old school medicine as a "menace" to the public health.

It has been the observation of the present writer, from contact and acquaintance with hundreds of members of the osteopathic profession from all over the United States, that on the average their profession is just as sincere, public-spirited, and disinterested, and just as concerned in extending the boundaries of medical knowledge as is the allopathic or "orthodox" medical profession. It is thought that the epithets applied to the osteopathic profession in the article *Legal Control of Medical Charlatanism* are perhaps an unconscious reflection of the attitude of certain members of the "orthodox" medical profession. It would seem that this attitude, in turn, has its roots in professional jealousy and sometimes in economic self-interest.

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#### Landlord and Tenant—Emblements and Apportionment of Rent When Life Tenant Lessor Dies before Expiration of Term

What are the rights and liabilities of the parties in interest when the holder of a life estate in real property leases his property for a term of years and dies before the end of the term? The question arises infrequently in our courts, presenting interesting and difficult problems. A study of the law on this point in eleven of our southern states<sup>1</sup> reveals an attempt by the courts and legislatures to determine equitably the rights of all parties in interest.

<sup>1</sup> Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, Virginia. For a more complete study see Note (1920) 6 A. L. R. 1056.