

Opinion No. 24-3753

February 4, 1924

BY: JOHN W. ARMSTRONG, Assistant Attorney General

TO: Requested by: Dr. W. T. Joyner, Secretary, New Mexico Board of Medical Examiners, Roswell, New Mexico.

Osteopaths, Licensed Only as Such, may not Prescribe and Dispense Narcotics.

OPINION

{*124} The question presented by your inquiry is whether or not persons licensed to practice only osteopathy in this state are authorized thereby to prescribe and dispense narcotic drugs.

It may be well to quote the following statutes on the subject:

"It shall be unlawful for any person to sell, or dispense, any of the articles enumerated in Schedule 'C' or any emmenagogue or abortive, except that registered pharmacists may dispense such articles upon written prescription of a legally licensed physician of the State of New Mexico. * * * Schedule C shall comprise: Opium, or its preparations containing more than two grains of opium to the ounce, or its alkaloids, ergot and cottonroot or their preparations, cocoa or its preparations or alkaloids, oil of tansy, oil of pennyroyal, oil of savine, or any emmenagogue or other abortive agent." -- Secs. 2376, 2381, Code 1915.

Who is a "regularly licensed physician" within the meaning of the foregoing?

{*125} "The term "physician" in the statutes in reference to the practice of medicine refers to those exercising the calling of treating the sick by medical agencies, as commonly practiced through the state at the time the act was passed. The term does not include an osteopath, as osteopathy teaches neither therapeutics, materia medica, surgery, nor bacteriology, but rests entirely upon manipulation of the body for the cure of disease". -- Nelson v. State Board of Health, 22 Ky. Law Rep. 438, 441.

It seems not very difficult to determine the meaning of the term, "regularly licensed physicians", as used in said Secs. 2376 and 2381 when considered in connection with the 1923 Act entitled:

"AN ACT CREATING THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF NEW MEXICO AND REGULATING THE PRACTICE OF MEDICINE THEREIN."

Sec. 9, Chap. 44, S. L. 1923 makes it a criminal offense for any person to "practice medicine" without being licensed as provided by said chapter. The question then arises

as to whether or not a person is "practicing medicine" when he "prescribes and dispenses narcotic drugs." The statute answers this:

"For the purposes of this Act, the words, 'practice of medicine' shall mean to open an office for such purpose or to announce to the public or any individual in any way, a desire or willingness or readiness to treat the sick or afflicted, or to investigate or to diagnose, or offer to investigate or diagnose any physical or mental ailment or disease of any person, **or to suggest, recommend, prescribe or direct, for the use of any person, any drug, medicine, appliance or other agency, whether material or not material, for the cure, relief or palliation of any ailment or disease of the mind or body, or for the cure or relief of any wound, fracture or bodily injury or deformity,** after having received, or, with the intent of receiving therefor, either directly or indirectly, any bonus, gift or compensation. * * * Provided, further, that nothing in this Act shall be construed so as to interfere with the practice of Osteopathy, * * *." -- Sec. 7, Chap. 44, S. L. 1923.

The only statutes we seem to have on the subject to "interfere" with or affect the practice of osteopathy are Secs. 4003 to 4009, incl., Code 1915.

The underlined or emphasized portions of said Sec. 7 hereinbefore quoted are matters and privileges not coming within the scope of osteopathy as contemplated by our law. The "practice of osteopathy" seems not to include authority to "prescribe and dispense narcotics." From the definitions we have examined, the "practice of osteopathy" seems not to contemplate the use of drugs and medicines:

"Osteopathy. The treatment of disease without drugs or knife, as by the manipulation of bones, cartilage, ligaments, or muscle. -- Funk & Wagnalls Practical Standard Dictionary. (1923 ed.)

Under our statutes, examinations for the practice of osteopathy require that one submit himself to an examination in "theory and {126} practice of osteopathy", while those relating to the practice of medicine require that one must submit to an examination in the "practice of medicine." Examinations for the practice of medicine also include questions in materia medica, bacteriology and therapeutics. Applicants to practice osteopathy must submit themselves to examination by State Board of Osteopathy and applicants to practice medicine to New Mexico Board of Medical Examiners.

We conclude that one may not prescribe narcotic drugs without complying with Chapter 44 of the Session Laws of 1923.

"Osteopathy teaches neither therapeutics, materia medica, nor surgery. Bacteriology is also ignored by it. As we understand the record, it relies entirely on manipulation of the body for the cure of diseases. Its theory is that a large number of ailments are due to irregular nerve action, and that by stimulating or repressing the nerve centers by manipulation they enable nature herself to right the evil. It administers no drugs; it uses no knife. It does not profess to cure all diseases. When a case is presented requiring

surgery or medication, the osteopath gives way to the physician. Faith cure or magnetism has no place in the system. It relies wholly upon manipulation aiding the **vis medicatrix naturae**. The main things taught in the school are psysiology, anatomy, and the treatment of diseases by manipulation. * * * The practice of medicine is a pursuit very generally known and understood, and so, also, is that of surgery. The former includes the application and uses of medicines and drugs for the purpose of curing, mitigating, or alleviating bodily diseases, while the functions of the latter are limited to manual operations, usually performed by surgical instruments or appliances. * * * Services in kneading and manipulating the body are no more the practice of medicine than services in bathing a patient to allay his fever or the inflammation of a wound. Appellant may not prescribe or administer medicine or perform surgery, but, so long as he confines himself to osteopathy, kneading and manipulating the body without the use of medicine or surgical appliances, he violates no law, * * *." -- Nelson v. State Board of Health, 50 L. R. A. 386.

"Osteopathy has been judicially defined as: 'A method of treating diseases of the human body without the use of drugs, by means of manipulations applied to various nerve centers, -- chiefly those along the spine, -- with a view to inducing free circulation of the blood and lymph, and equal distribution of the nerve forces. Special attention is given to the readjustment of any bones, muscles, or ligaments not in the normal position.'" -- 6 Words and Phrases, p. 5070.

"The rubbing and kneading charged in the indictment are consistent with our general knowledge that, in practice, the adherents to osteopathy wholly reject drugs and medicines. * * * The obvious purpose of the act under consideration is to secure to those who believe in the efficacy of medicines the ministrations of educated men, thus preventing fraud and imposition, and to protect society from the evils which result from the administration {**127*} of potent drugs by the ignorant and unskilful." -- State v. Liffing, 46 L. R. A., 336.

"One who practices osteopathy and treats diseases only by manipulation of the patient's limbs, muscles, ligaments and bones, does not practice medicine, nor is he required to obtain a license under a statute defining the practice of medicine as prescribing or directing for the use of any person any drug, medicine, appliance, or agency for the cure of disease or injury." -- Hayden v. State, 95 A. S. R., 471.