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What Constitutes the Practice of Medicine in Wyoming

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that such a plea is not to operate as a waiver. But the right to a trial de novo is not waived by a plea of guilty in the court appealed from.

A trial de novo is extraordinary in that the district court is to try the case as though it were originally brought before that court. Jurisdiction is only in a sense appellate, because the defendant has a new trial on the merits and the district court has no power to review, affirm or reverse the judgment of the justice court.²⁶ As Justice Parker said in *State v. Hungary*, "it is difficult to visualize how a trial could be *anew* and *as an issue of fact upon an indictment*, if a plea of guilty prevented any trial at all."

It would seem then that those courts which have interpreted their statutes as not allowing appeals from a plea of guilty in spite of a further right to a trial de novo, have given the legislation an illogical construction.²⁷

The reason some courts are hesitant to interpret their state statutes in favor of the right to appeal is partly at least the fear of an excess of minor traffic cases coming before the higher courts to be reviewed or retried.²⁸ Also it has been said that there are dangers in allowing defendant to plead guilty in justice court to test what disposition will be made of his case, with the knowledge that if the judgment is unsatisfactory he can later plead not guilty in district court and exercise his statutory right to a new trial on the merits.²⁹ Policy, however, should not interfere with statutory rights³⁰ and the Wyoming court in the *Hungary* case recognized that it had no right to look for or impose meanings different from those conveyed by the plain, unambiguous language of the statute.

The Wyoming court in the *Hungary* case did not hold that the decision would apply to appeals from a municipal court or police court as well as from a justice court. However the implication is clear that the *Hungary* rule would apply to appeals from these inferior courts too, because the statutes allowing appeals from municipal or police courts provide that these appeals shall be in the same manner as appeals from a justice court.³¹

JOHN CROW

WHAT CONSTITUTES THE PRACTICE OF MEDICINE IN WYOMING

The modern medical patient enjoys the benefit of a vast fund of medical knowledge and a body of law assuring him, to a considerable degree, that those to whom he entrusts his health and life are possessed of that knowledge. These laws regulating the practice of medicine are found in every state, controlling the medical profession and its competitors.

26. 22 C.J.S., Criminal Law § 403 (1941).

27. *Supra* note 14, see dissent; *supra* notes 12 and 18.

28. See, *Martin v. State*, 49 Del. 344, 116 A.2d 685, 688 (1955).

29. *Ex parte Jones*, 128 Tex.Cr.R. 380, 81 S.W.2d 706 (1935).

30. *State v. Hedges*, 67 Kan. 76, 72 Pac. 528 (1903).

31. Wyo. Comp. Stat., § 29-1805 (1945).

The common statutory definitions may be summarized by stating that they confer, upon an individual licensed to practice medicine, a substantially unqualified right to utilize any healing technique that the individual's experience and professional ability may indicate.¹ In all states, the statute possess restrictive effects as well. They separately define practitioners of the various "healing arts" such as chiropractors, osteopaths, naturopaths, and the like, and the rights of such persons to practice are of a much more limited character than in the case of those licensed to practice medicine in general. Considering the present state of medical knowledge, the legislature evidently believes it undesirable to confine all healing to any one school or practice. Distinctions may be made, and schools or methods of practice may be exempted from regulation or subject to special regulations, if the discrimination is not arbitrary nor unreasonable.² Those who practice in what we may call restricted areas are forbidden to go beyond the boundaries of specified techniques and methods of practice. The chief difficulties which arise concern the delineation of these boundaries, and whether certain procedures fall on the permissible or the forbidden side of the boundary line.

The right to practice medicine is a valuable property right but it is a conditional right, subject to the police power of the state.³ In *Dent v. West Va.*,⁴ it was said that every citizen may follow any lawful calling, business or profession he may choose, subject only to such restrictions as are imposed upon all persons of like age, sex, and condition. However, the power of the state to provide for the general welfare of its people authorizes it to prescribe such regulations as, in its judgment, will secure or tend to secure them against the consequences of ignorance and incapacity as well as deception and fraud.⁵

States exercise their regulatory powers by requiring the licensing of practitioners,⁶ by making provisions for suspension or revocation of licenses,⁷ and by imposing penalties for practicing without a license.⁸ Generally, the statutes of the various states do not specify what shall constitute a violation; rather, they use general terms prohibiting the practice of medicine without a license.⁹ The duty of adjudicating violations falls upon an administrative body, or the courts, or a combination of the two.

Under some statutes, the question as to whether or not there has been a violation hinges to an extent on whether the service or treatment is for

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1. Wyo. Comp. Stat. §§ 37-2007 and 37-716 (1945).
 2. *Semler v. Oregon State Bd. of Dental Examiners*, 294 U.S. 608 (1935); *Watson v. Maryland*, 218 U.S. 173 (1910), 30 S.Ct. 644, 54 L.Ed. 987 (1910).
 3. *Lipset v. Davis*, 119 Colo. 335, 203 P.2d 730 (1949).
 4. 129 U.S. 114 (1889), 9 S.Ct. 231, 32 L.Ed. 623 (1889).
 5. *Dent v. West Virginia*, 129 U.S. 114 (1889), 9 S.Ct. 231, 32 L.Ed. 623.
 6. Wyo. Comp. Stat. § 37-2004 (1945).
 7. Wyo. Comp. Stat. § 37-2012 (1945).
 8. Wyo. Comp. Stat. § 37-2012 (1945).
 9. See e.g., Wyo. Comp. Stat. § 37-2012 (1945).

compensation or is gratuitous.¹⁰ It seems that there would be no violation of some statutes if the act were gratuitous; this includes Wyoming.¹¹ The Wyoming statutory definition of the practice of medicine includes the charging of fees or other compensation for services,¹² but also allows gratuitous service in case of emergency.¹³ Other statutes make no reference at all to the matter of compensation.

It has been held that one of the necessary elements of the practice of medicine is the diagnosis of the patient's symptoms, to determine *with* what disease or infirmity he is afflicted.¹⁴ Apparently the Wyoming statute could be violated whether or not there was a diagnosis, since it provides that "one who holds himself out to the public as being engaged within this state in the diagnosis or treatment of disease, injuries or deformities of human beings . . ." is engaged in the practice of medicine.¹⁵

The giving of medicine is not essential to the practice of medicine.¹⁶ The United States Supreme Court affirmed without an opinion a Louisiana case which held that the application of physical force to parts of the body for the purpose of curing disease or relieving bodily ailments constituted the practice of medicine. The case involved the practice of a chiropractor.¹⁷ The Wyoming statute defining the practice of medicine is sufficiently broad to include an act which would not involve the giving or prescribing of medicine.¹⁸

It has been held that the periodic visits of a physician licensed to practice in one state, to a town in a neighboring state, the examination of patients in the latter town, and the sending of medical advice and medicine to them from the state of his residence constitutes the practice of medicine in such town.¹⁹ Wyoming exempts physicians licensed to practice in other states or countries who meet with legally licensed physicians in this state for the purpose of consultation. Also exempted are those physicians residing on the border of a neighboring state provided they are authorized in that state to practice medicine.²⁰

Even though a person does not presume to be a "physician" he would violate the Wyoming medical statutes if he practiced medicine without a license.²¹ An Iowa case held that it is not necessary that one presume to be a physician in order to violate the statute, for anyone treating the

10. See e.g., Rev. Codes of Mont. Ann. § 66-1007 (1947); Miss. Code Ann. § 8888 (1942); Rev. Stat. of Maine, c. 66, §. 7 (1954).

11. Wyo. Comp. Stat. § 37-2007 (1945).

12. Wyo. Comp. Stat. § 37-2007 (1945).

13. Wyo. Comp. Stat. § 37-2013 (1945).

14. Pacific Mut. Life Ins. Co. v. Cunningham, 54 F.2d 927 (S.D. Fla. 1932).

15. Wyo. Comp. Stat. § 37-2007 (1945).

16. Slocum v. Fredonia, 134 Kan. 853, 8 P.2d 332 (1932).

17. Louisiana State Medical Examiners v. Fife, 162 La. 681, 111 So. 58 (1927).

18. Wyo. Comp. Stat. § 37-2007 (1945).

19. Slocum v. Fredonia, 134 Kan. 853, 8 P.2d 332 (1932); State v. Davies, 194 Mo. 485, 92 S.W. 484 (1906).

20. State v. Borah, 51 Ariz. 318, 76 P.2d 757 (1938).

21. Wyo. Comp. Stat. § 37-2014 (1945).

sick may be found guilty of practicing medicine.²² Nor can one practicing medicine without a license shield himself with the fact that he is in the employ of another who has a license, as it is the person performing the act of practice that the statute seeks to regulate.²³

Osteopathy is defined as a drugless and non-surgical technique of curing diseases by massage and manipulation of the bones of the body.²⁴ The system is defined as, "a system of medical practice based on the theory that disease is due chiefly to mechanical derangement in tissues, placing emphasis on restoration of functional integrity by manipulation of the parts. The use of medicines, surgery, proper diets, psychotherapy, and other measures are included in osteopathy."²⁵ Generally the medical practice acts of the several states specifically declare that osteopathy is not the practice of medicine within the meaning of the statute.²⁶ However, the statutes affording osteopaths the right to practice their system of healing vary considerably in the latitude of practice permitted by these practitioners. Wyoming has no special provisions relating to the practice of osteopathy; to practice in Wyoming an osteopath must meet the standards set up for physicians, and the Wyoming statute requires that one of the five members of the Board of Medical Examiners be an osteopathic physician.²⁷

Late in the 19th century one D. D. Palmer, an Iowa grocer, devised the system of healing known as chiropractic.²⁸ It has been defined as a system of healing that treats diseases by manipulation of the spinal column. Generally the statutory provisions regarding the practice of chiropractic either implicitly or explicitly interdict the use of drugs or medicines and the practice of surgery by the chiropractor.²⁹ The Wyoming statutory definition of the practice of chiropractic provides that "the practice of chiropractic is hereby declared not to be the practice of medicine, surgery, or osteopathy within the meaning of the laws of the State of Wyoming,"³⁰ and further declares that a chiropractor shall not use the word or abbreviation of the word "doctor" or "physician" without modifying it by using the word "chiropractic."³¹

In at least two jurisdictions, the statutes defining the practice of chiropractic expressly deny the chiropractor the right to practice obste-

22. *State v. Bresee*, 137 Iowa 673, 114 N.W. 45 (1907).

23. *State v. Paul*, 56 Neb. 359, 76 N.W. 861 (1898); *Gobin v. State*, 9 Okla.Crim.Rep. 201, 131 Pac. 546 (1913).

24. Webster's New Collegiate Dictionary (2d Ed. 1953).

25. *Ibid.*

26. *State v. Sawyer*, 36 Idaho 814, 214 Pac. 222 (1923); See e.g., Code of Ala., Tit. 46, § 259.

27. Wyo. Comp. Stat. § 37-2001 (1945).

28. K.C. Doyle, *Science v. Chiropractic*, Public Affairs Pamphlet 191 (1st Ed. 1953).

29. See e.g., Compiled Laws Mich. 338.156 (1948); Fla. Stat. 460.11 (2) (b) (1953); Rev. Code of Mont. Ann. 66.509 (Choate 1947).

30. Wyo. Comp. Stat. § 37-716 (1945).

31. Wyo. Comp. Stat. § 37-2014 (1945).

trics.³² In Wyoming a separate statute provides for the practice of obstetrics and mid-wifery upon passing a suitable examination given by the State Board of Medical Examiners.³³ Chiropractors licensed to practice in Wyoming must observe state regulations relating to control of contagious diseases. They are entitled to sign death certificates as well as certificates relating to public health. These certificates have the same force and effect as if signed by other practitioners.³⁴

In *Kahn v. Metropolitan Life Ins. Co.*,³⁵ a policy holder who failed to disclose that she had been treated by a chiropractor within two years of her application for the policy was held to have received "medical or surgical treatment" within the meaning of the policy, and her beneficiary was denied recovery.

Statutes regulating the practice of optometry and provisions excepting that practice from the definition of the practice of medicine are now general.³⁶ Such statutes usually, if not always, define the practice of optometry and either in express or implied terms restrict a licensee to practice that branch of the healing art as defined and limited in the statute.³⁷ Wyoming law provides that the optometrist cannot use any word or abbreviation indicating that he is engaged in practice of medicine or surgery or treatment of disease or injuries to the human eye, nor does he possess the right to use drugs or medicines in any form for the treatment or examination of the human eye.³⁸ Wyoming also provides for a separate board for the examination and licensing of optometrists.³⁹

Prior to the enactment of such statutes, and where statutory definition of the practice of medicine was very broad and comprehensive in its terms, the practice of optometry⁴⁰ as well as the practice of osteopathy⁴¹ and chiropractic⁴² was held to constitute the practice of medicine.

A chiropodist, as defined by the Wyoming statute, means one "who for hire, or reward, examines and diagnoses ailments of the human foot and practices minor surgery upon the feet, limited to those structures of the foot superficial to the inner layer of the fascia of the foot." But the statutes do not confer the right to treat communicable or constitutional diseases of the bones, ligaments, muscles or tendons of the feet or any other part of the body, or to perform any operation involving the use of cutting instruments or right to use anesthetic other than local.⁴³ In *State*

32. S.D. Code § 27.0510 (1939); N.D. Rev. Code § 43-0601 (1943).

33. Wyo. Comp. Stat. § 37-2015 (1945).

34. Wyo. Comp. Stat. § 37-708 (1945).

35. 132 N.J.L. 503, 41 A.2d 329 (1945).

36. See e.g., Wyo. Comp. Stat. § 37-1807 (1945).

37. *Ibid.*

38. *Ibid.*

39. Wyo. Comp. Stat. § 37-1807 (1945).

40. *Baker v. State*, 91 Tex.Crim.Rep. 521, 240 S.W. 924 (1922).

41. *Collins v. Texas*, 223 U.S. 288 (1912), 32 S.Ct. 286, 56 L.Ed. 439 (1912).

42. *Louisiana State Bd. of Medical Examiners v. Fife*, 162 La. 681, 11 So. 58 (1926).

43. Wyo. Comp. Stat. § 37-601 (1945).

v. Catellier,⁴⁴ the court held that a chiroprapist must not give a general anesthetic, either as a chiroprapist or as a layman, under a claimed emergency. A recent Idaho case held that chiroprapy does not constitute the practice of medicine, and observed that "it is a well known fact, of which the court will take judicial notice, that physicians and surgeons do not, and will not, do the ordinary work of the chiroprapist." Under a reasonable interpretation chiroprapy does not involve the practice of medicine either major or minor.⁴⁵ The chiroprapist is further limited in Wyoming in that he cannot prescribe, administer or dispense narcotic drugs.⁴⁶

Physiotherapy has been described as the treatment of disease and ailments of the human body, by prescribing and using physical agents such as light, heat, cold, water, electricity and massage.⁴⁷ The regents of the University of New York, in their capacity as directors of the Medical School of that University, recognized that there is a marked distinction between "physician and psysiotherapist," and the license of the latter is issued only when under the supervisory capacity of the regents.⁴⁸ Physiotherapy (now known as physical therapy) is widely used in Wyoming hospitals and the benefit of such treatment is well recognized. There is no Wyoming statute concerning the practice of physiotherapy or physical therapy, but it is prescribed by physicians and given under their supervision.⁴⁹

Naturopathy is a system of physical culture and drugless treatment of disease by methods supposed to simulate or assist nature.⁵⁰ It is a drugless system of therapy by the use of physical forces such as air, light, water, heat, massage, etc.⁵¹ It is one of a number of fields in the art of healing which have been recognized by some legislatures as accepted processes of preventive and curative medicine.⁵² Under some statutes it includes the use and practice of phytotherapy,⁵³ and also minor surgery, obstetrics and gynecology, autotherapy⁵⁴ and biologicals.⁵⁵

In *Hahn v. State*,⁵⁶ the Supreme Court of Wyoming concluded that "naturopathy" is a method of practicing medicine, and therefore the defendant who professed to be a doctor of naturopathy, and who had no

44. 63 Wyo. 123, 179 P.2d 203 (1947).

45. *State v. Armstrong*, 38 Idaho 493, 225 Pac. 491 (1924).

46. Wyo. Comp. Stat. §§ 46-201 and 46-207 (1945).

47. *State v. Bain*, 130 Mont. 90 (1956), 295 P.2d 241 (1956).

48. *Swift v. Graves*, 19 N.Y.S.2d 686 (1940).

49. Conversation, Bernard J. Sullivan, M.D., Laramie, Wyoming; Conversation, Beverly Darrow, Physiotherapist, Veterans Hospital, Cheyenne, Wyoming.

50. *Perry v. Larson*, 25 F.Supp. 728 (S.D. Fla. 1938).

51. *Ibid.*

52. *Williams v. Capital Life & Health Ins. Co.*, 209 S.C. 512, 41 S.E.2d 208 (1947).

53. *Words and Phrases*, Vol. 32A, p. 66. Describes phytotherapy as use of plants to heal.

54. *Webster's New Collegiate Dictionary* (2d Ed. 1953). Describes autotherapy as a treatment of a disease by using the patients pathological excretions.

55. *Webster's New Collegiate Dictionary* (2d Ed. 1953). Describes biologicals as a branch of science which treats of living organisms.

56. Wyo., 322 P.2d 896 (1958).

license to practice medicine, was guilty of practicing medicine without a license. The court went on to say that one practicing naturopathy must be admitted to practice as a physician or surgeon.

In recent years several bills have been introduced in the Wyoming legislature attempting to set up a board for the licensing of naturopaths.⁵⁷ Though these bills would have allowed the naturopath to practice with approximately the same restrictions as now apply to chiropractors, they have without exception failed to pass. Since the decision in *Hahn v. State*, a naturopath practicing in Wyoming would be subject to the penalties imposed by the statute for practicing medicine without a license.⁵⁸ The same would probably be true of others practicing vague healing arts such as naprapathy,⁵⁹ mechanotherapy,⁶⁰ and the like.

Generally, Christian Science and other religious groups employing faith healing are specifically excepted from the statutory definitions of the practice of medicine.⁶¹ Typical is the Wyoming statute which provides that the chapter relating to the practice of medicine shall not be applied to persons treating human ailments by prayer or by spiritual means, as an exercise or enjoyment of religious freedom.⁶²

Prior to the enactment of provisions exempting the practice of Christian Science healing from the statutory definitions of the practice of medicine, there was some diversity among the courts as to whether such healing was the practice of medicine. In *State v. Mylod*,⁶³ it was held that the practice of faith healing was not the practice of medicine. A Nebraska court held that where the Christian Scientist healed for compensation, he was guilty of practicing medicine without a license.⁶⁴

The courts are almost universally in accord with the principle that the medical practice acts necessarily exclude all but natural persons from the right to obtain a license.⁶⁵ A corporation cannot present the necessary high school and college diplomas, nor can it pass a state board examination or tender the requisite certificate of character. In addition there is the point of view that the practice of medicine by corporations for profit through the employment of licensed physicians has a tendency to debase the profession and is contrary to public policy.⁶⁶ On the basis of the

57. See e.g., S.F. No. 181, Introduced January 1957.

58. Wyo. Comp. Stat. § 37-2012 (1945).

59. Webster's New Collegiate Dictionary (2d Ed. 1953). Describes naprapathy as a therapeutic system using manipulation and based on the theory that diseases result from strained or contracted ligaments in pelvis, spine or thorax.

60. Webster's New Collegiate Dictionary (2d Ed. 1953). Describes mechanotherapy as treatment of disease by mechanical means.

61. Wyo. Comp. Stat. § 37-2013 (1945).

62. *Ibid.*

63. 20 R.I. 632, 40 Atl. 753 (1898).

64. *State v. Buswell*, 40 Neb. 158, 58 N.W. 728 (1894).

65. *People ex. rel. State Medical Examiners v. Pacific Health Corp.*, 12 Cal.2d 156, 82 P.2d 429 (1938); *People v. United Medical Service*, 363 Ill. 442, 200 N.E. 157 (1936).

66. *Group Health Assn. v. Moor*, 24 F.Supp. 445 (D.C. Cir. 1938); *Butterworth v. Boyd*, 12 Cal.2d 140, 82 P.2d 434 (1938).

proposition that optometry is a mechanical rather than a learned profession, it has been held that the corporate practice of optometry is not repugnant with public policy, and is permissible unless the regulatory statute expressly limits the practice to duly licensed individuals of persons.⁶⁷

The Wyoming statutes regarding the various "healing arts" are typical of the statutes of most states. We may summarize their effect as follows: Physicians and surgeons upon passing the state board examination have few limitations on their practice. Chiropractors, chiropodists and optometrists are limited in their activities and should they step outside the limits set by statute, they would be guilty of practicing medicine without a license. Laymen are prevented from carrying on any type of medical activity except emergency first aid treatment and psychotherapy, or such types of healing as is associated with faith healing or Christian Science tenets.

In Wyoming, each of the healing arts as are separately recognized have their own examining boards, and each issue a license qualifying the recipient to practice his particular calling.

The drugless healers, secure in the legislative recognition which has been accorded them in almost all states, continue to flourish. Prohibition, assuming it to be constitutionally possible, is not desirable. Drugless healers should have a right to practice within reasonable limits, and it is doubtful whether any attempt to legislate them out of existence would reflect the will of the people. Doubtless, many of their theories are fallacious; but medical men are beginning to realize that they have much to learn from the healers, especially in the fields of physical therapy and psychotherapy.

A legislative plan which has been adopted by many of the states has been extremely effective in controlling questionable forms of the "healing arts" such as naturopathy, chiropractic and others. The purpose of the basic science law is set forth as follows in a bulletin published by the American Medical Association:⁶⁸

In most states there are two or more independent examining boards to test the professional qualifications of persons desiring to practice the healing art. Each board operates under an independent act and applies a different standard to determine the qualifications of the applicant.

The elimination of this system of licensure and the substitution of a single, adequate standard by which the proficiency of all aspiring practitioners can be judged is the logical solution of the problem. Such a solution however, is remote of attainment. Because of that remoteness, it has been necessary to seek another solution. A basic science law seems to afford the answer. Such a law creates a single unbiased, nonsectarian, examining board to

67. *Silver v. Lansburgh & Bros.*, 111 F.2d 518 (D.C. Cir. 1940).

68. Pamphlet, *Basic Science Laws*, published by Bureau of Legal Medicine and Legislation, American Medical Association, May, 1938, 1.

determine whether any applicant for a license to practice any form of the healing art is sufficiently well informed concerning those sciences on which the art is based to justify his examination by one of the state boards authorized to issue such a license as the applicant desires.

The basic science statutes are supplementary to the usual licensing statutes and require that the applicant obtain, as a prerequisite to securing a license in a particular field of the healing art, a certificate showing that he is proficient in certain basic sciences, usually anatomy, physiology, pathology, chemistry, and bacteriology. In other words, in these states the demonstration by the applicant of his proficiency in these basic sciences does not entitle him to practice one of these arts; it merely entitles him to appear before a professional board of his choice for an examination in his field of specialization. In preventing the licensure of unqualified persons, they have worked well.⁶⁹

The American Medical Association has drawn up a Uniform Basic Science Statute which it recommends to the various state legislatures.⁷⁰ In this statute "the healing art" is defined. The members of the examining board may not be actively engaged in the practice of the healing art but must be members of faculties of state educational institutions.

The effectiveness of this type of statute is illustrated by a survey which showed that a group of 8,960 persons have been examined by basic science examining boards in the several states which have adopted the law; only 12% of those being examined for doctor of medicine failed the examination and were unable to apply for a license to practice. Of the second largest group to be examined, osteopaths, 41% failed. In the third group, composed of chiropractors 74% failed.⁷¹

It is apparent that the adoption of such a statute would go far in protecting the public from incompetent, poorly educated practitioners in any healing art. A similar law would certainly be worthy of study by Wyoming legislators.

WILLIAM A. TAYLOR

LIABILITY OF THE SURVIVOR FOR PAYMENT OF AN OBLIGATION SECURED BY ENTIRETIES PROPERTY

Among the difficult problems arising from the holding of property as tenants by the entirety is the liability of a deceased tenant's estate for an obligation secured by a mortgage on the property at the time of his death. The survivor now holds all of the property alone; should he be liable for the entire secured obligation, or should the estate of the deceased be held liable for at least half of the obligation? There is a split of authority on this point which is discussed by the Delaware court in the recent case of

69. Pamphlet, Basic Science Laws, op. cit. supra note 68.

70. Ibid.

71. Ibid.