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PHYSICIANS AND SURGEONS-STATUS OF OSTEOPATHS- LIMITATIONS ON PRACTICE

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PHYSICIANS AND SURGEONS—STATUS OF OSTEOPATHS—LIMITATIONS ON PRACTICE—From early times states have regulated the practice of the healing arts in the exercise of their police power.¹ The statutes usually provide unlimited licenses for the general practitioner and limited licenses for practitioners of special schools.²

The requirements for obtaining an unlimited license generally include preliminary education in high school and college, a four-year course in an approved medical school with certain required courses, a period of internship in a hospital and an examination by a state licensing

¹ For an interesting article on early regulation of the practice of medicine, see Caldwell, "Early Legislation Regulating the Practice of Medicine," 18 ILL. L. REV. 225 (1923).

² Usually the statutes define the healing arts broadly enough to encompass all forms and forbid the practice of any of them without a license. The following classes of persons are commonly excepted from the operation of the statutes and may practice without a license: persons administering domestic remedies to members of the family, prayer healers, doctors licensed in other states called in for consultation, doctors licensed in adjoining states whose practice extends across the border, officers in the United States Army, Navy, or Public Health Service in the course of their duties, student interns in hospitals and persons rendering gratuitous services in emergencies. They are not to be confused with limited practitioners who must have a license to heal. For typical provisions, see 1-A Ohio Gen. Code (Page, 1946) § 1287; Ill. Ann. Stat. (Smith-Hurd, 1935) ch. 91, § 16v; and 63 Pa. Ann. Stat. (Purdon, 1946 Cum. Supp.) § 409.

bureau in most of the subjects taught in medical school.³ An unlimited license gives the right to practice any form of medicine including the administration of any drugs, to perform all kinds of surgery, to certify births and deaths, and generally to hold state medical office and to examine the insane and workmen's compensation claimants.⁴ The prescribed education and the examinations for licensure differ, and many of the states have separate examining boards.⁵

Until recently, the osteopath has generally been given a limited license. The present status of the osteopath is best understood by a comparison with that of the unlimited practitioner. Though most of the statutes have been examined, this comment is based primarily upon those of Illinois, New York, Pennsylvania, Ohio, Michigan, California, Massachusetts and Indiana, which are fairly typical of the rest. These statutes vary widely in their provisions, but for the purposes of discussion, they have been treated in three arbitrary categories: (1) statutes in which the scope of the osteopath's license is considerably narrower than that of the unlimited practitioner; (2) those in which it is somewhat similar to that of the unlimited practitioner; and, (3) those in which it is almost identical with that of the unlimited practitioner.

I

States in which the scope of the license is considerably narrower than that of the unlimited practitioner are Illinois, Pennsylvania, and New York. In this group, there is a greater difference between the require-

³ For instance, see 63 Pa. Ann. Stat. (Purdon, 1941) § 405; Ill. Ann. Stat. (Smith-Hurd, 1935 Cum. Supp.) ch. 91, § 5(1).

⁴ None of the statutes sets forth specifically the scope of the unlimited practitioner; they merely use terms like "unlimited," or "licensed to practice medicine and surgery in all its branches."

⁵ With regard to examining boards, the states may be classified according to information received from the Bureau of Legal Medicine and Legislation of the American Medical Association as follows:

"a. States having independent osteopathic boards which pass on the educational and moral requirements of applicants, conduct examinations and issue licenses to practice.

Arizona	Montana
Arkansas	Nevada
California	New Mexico
Florida	North Carolina
Georgia	North Dakota
Kansas	Oklahoma
Louisiana	Pennsylvania
Maine	South Carolina
Maryland	South Dakota
Michigan	Tennessee
Minnesota	Vermont
Missouri	West Virginia

ments for a license to practice medicine and the requirements for a license to practice osteopathy than in either of the other groups.

Although the osteopath cannot prescribe or administer narcotics or other drugs,⁶ the Pennsylvania and Illinois statutes permit the use of antiseptics and antidotes.⁷ He cannot perform major surgery in any of these states,⁸ but may perform minor surgery in Pennsylvania.⁹

The Pennsylvania statute specifically authorizes the osteopath to

b. States in which a separate board of osteopathic examiners operates under the supervision of a central licensing department or bureau.

Connecticut	Rhode Island
Idaho	Utah
Iowa	Washington
Nebraska	

c. States in which osteopaths are examined and licensed by the medical examining agency on which there is osteopathic representation.

Colorado	Ohio
District of Columbia	Oregon
Illinois	Texas
Indiana	Virginia
Kentucky	Wisconsin
New Jersey	Wyoming
New York	

d. States in which osteopaths are licensed, under special conditions, by the state medical licensing board, on which the osteopaths have no representation.

Alabama	Mississippi
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e. States in which osteopaths are required to take the regular medical examination before the state medical licensing board, on which osteopaths have no representation.

Massachusetts	New Hampshire
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f. In Delaware, osteopaths are examined by the medical council, consisting of the Chief Justice of the State, the president of the regular examining board and the president of the homeopathic examining board, together with an osteopath selected by the council."

The Massachusetts statute has recently been amended to give osteopathic representation on the licensing board. Ann. Laws of Mass., (Supp. 1947) Ch. 112, § 2.

⁶ 16 N.Y. Consol. Law Ann. (McKinney, 1947) § 6512; Ill. Ann. Stat. (Smith-Hurd, 1934) Ch. 91, §§ 11(2), 16k.

⁷ 63 Pa. Stat. Ann. (Purdon, 1941) § 266. A Pennsylvania intermediate court decided in *Commonwealth v. Cohen*, 142 Pa. Super. 199, 15 A. (2d) 730 (1940) that an osteopath was a licensed physician within the terms of the narcotics act which forbids prescription or administration of drugs except by a licensed physician, but that an osteopath who prescribed narcotics might be guilty of illegal practice of medicine under another part of the statutes.

Ill. Ann. Stat. (Smith-Hurd, 1935) ch. 91, § 16f. The act shall not be construed "to prohibit any person from using any antiseptic prescribed by the Department of Public Health . . . for the prevention of the spread of communicable diseases, nor from using antidotes, or rendering any other service, in case of emergency if without charge or compensation." This should include osteopaths.

⁸ Ill. Ann. Stat. (Smith-Hurd, 1934) ch. 91 §§ 11(2), 16k. See *People v. Frankowsky*, 371 Ill. 493, 21 N.E. (2d) 582 (1939) for a successful prosecution of an osteopath under this statute for performing surgery; 16 N.Y. Consol. Laws Ann. (McKinney, 1947) § 6512.

⁹ 63 Pa. Stat. Ann. (Purdon, 1941) § 266.

certify births and deaths.¹⁰ In New York and Illinois these duties are entrusted to "physicians,"¹¹ but other parts of the New York statute indicate that the term "physicians" includes osteopaths;¹² two early cases in Illinois reach the same result.¹³

In statutes providing for the commitment of the insane, examinations by qualified physicians are usually required. In Pennsylvania, where two "qualified physicians" must certify for commitment,¹⁴ a "qualified physician" is defined in the mental health act as one resident in the state for at least three years with a license to practice medicine and with three years practice or one year of experience in a mental hospital.¹⁵ Since the practice of osteopathy is declared not to be the practice of medicine,¹⁶ the osteopath would not be "qualified." In Illinois, certificates of two "qualified physicians who are of known competency and integrity"¹⁷ are required for commitment; it is probable that osteopaths would not be considered "qualified," or of "known competency" for this purpose. In New York, certificates of lunacy are to be signed by two "certified examiners;" a "certified examiner" is defined elsewhere in the statute as "a reputable physician, a graduate of an incorporated medical college, duly licensed to practice medicine in this state who shall have been in the actual practice of his profession for at least three years . . ." and who shall have complied with certain formalities.¹⁸ Since the New York statute distinguishes between a medical college and a college of osteopathy,¹⁹ it appears that osteopaths would not be permitted to sign these certificates.²⁰

Under workmen's compensation acts, provisions are made for appointment of physicians to examine or to render services. In New York, services are to be rendered by physicians recommended by a medical practice committee which also specifies the kind of services each physician

¹⁰ 63 Pa. Stat. Ann. (Purdon, 1941) § 269.

¹¹ 44 N.Y. Consol. Law Ann. (McKinney, 1943) §§ 377, 383; Ill. Ann. Stat. (Smith-Hurd, 1935) ch. 111½ §§ 42, 47.

¹² The New York statute defines the practice of medicine broadly enough to include osteopathy [16 N.Y. Consol. Law Ann. (McKinney, 1947) § 6501] and defines a physician as a practitioner of medicine (§ 6501) so an osteopath could be a physician under this statute.

¹³ *People v. Heckard*, 244 Ill. App. 112 (1927) (Births), *People ex. rel. Gage v. Siman*, 278 Ill. 256, 115 N.E. 817 (1917) in which the court decided that an osteopath is a physician and can therefore sign death certificates; the case was decided under an earlier medical practice act, but most of the reasoning would seem to be valid under the present act.

¹⁴ 50 Pa. Stat. Ann. (Purdon, 1947 Cum. Supp.) § 42.

¹⁵ *Id.*, § 3.

¹⁶ 63 Pa. Stat. Ann. (Purdon, 1941) § 266.

¹⁷ Ill. Ann. Stat. (Smith-Hurd, 1947 Cum. Supp.) ch. 23, § 189.7.

¹⁸ 34A N.Y. Consol. Laws Ann. (McKinney, 1947 Cum. Supp.) §§ 74, 19.

¹⁹ 16 N.Y. Consol. Laws Ann. (McKinney, 1947) § 6506.

²⁰ *Op. Atty. Gen.* (1942) p. 268.8.

is competent to give.²¹ Probably osteopaths could render but limited service under this act. In Pennsylvania, where the term "physician" does not include osteopaths, they could not make the examination which "impartial physicians or surgeons" are authorized to make.²² In Illinois, where examination is to be made by "duly qualified impartial physicians,"²³ the question turns upon a definition of "duly qualified."

In all these states osteopaths appear to be excluded by statute from serving as medical members of the county or municipal boards of health: in New York this is accomplished by requiring such members to be appointed from a list submitted by the county medical board which usually consists of unlimited practitioners;²⁴ in Pennsylvania, by specifying that only "physicians may serve;"²⁵ and in Illinois, by limiting service to "persons . . . licensed to practice medicine in all its branches."²⁶

Osteopaths with the necessary education may take special examinations and acquire additional rights of practice in all these states.²⁷

2

Ohio and Michigan, where the scope of the osteopath's license is somewhat more like that of the unlimited practitioner, require the same education for both, although the osteopath may attend an osteopathic school and the medical doctor, a medical college.²⁸ Both states give osteopaths and medical doctors substantially the same examinations except for the inclusion of questions on the practice of osteopathy in the examinations given the former.²⁹

Under the statutes of these states, either by express statement or clear

²¹ 64 N.Y. Consol. Laws Ann. (McKinney, 1948) § 13b.

²² 77 Pa. Stat. Ann. (Purdon, 1947 Cum. Supp.) § 831.

²³ Ill. Ann. Stat. (Smith-Hurd, 1947 Cum. Supp.) ch. 48, § 156(c).

²⁴ 44 N.Y. Consol. Laws Ann. (McKinney, 1947) § 20b.

²⁵ 53 Pa. Stat. Ann. (Purdon, 1931) § 3064.

²⁶ Ill. Ann. Stat. (Smith-Hurd, 1947 Cum. Supp.) ch. 111½, § 20c12.

²⁷ 16 N.Y. Consol. Laws Ann. (McKinney, 1947) § 6512. The osteopath by passing some additional examinations may obtain rights to perform minor surgery and to use anesthetics, antiseptics, narcotics, and biological products; by meeting all the requirements for the medical doctor, he can acquire the right to practice without limitation.

Ill. Ann. Stat. (Smith-Hurd, 1934) ch. 91, §§ 9, 12. If the osteopath was taught obstetrics in osteopathic school, he may be examined in the subject and by complying with the prerequisites in regard to education, he can take the regular medical licensing examination.

63 Pa. Stat. Ann. (Purdon, 1946 Cum. Supp.) § 268. A licensed osteopath who interns two years in an approved hospital, takes a year of surgical training in an osteopathic school, and passes an examination in osteopathic surgery may be licensed as an osteopathic surgeon and perform operative surgery as taught in reputable osteopathic schools.

²⁸ 10 Mich. Stat. Ann. (1937) §§ 14-533, 14-572; Ohio Gen. Code (Page, 1946) § 1270.

²⁹ 10 Mich. Stat. Ann. (1937) §§ 14-533, 14-572, id. (1947 Supp.) § 14-791; Ohio Gen. Code (Page, 1946) § 1273. Also see note 5, supra.

implication, osteopaths may prescribe and administer narcotics and other drugs.³⁰ They may practice surgery and administer anesthetics at least to the extent taught in their schools.³¹ In Michigan, the statute expressly provides that osteopaths may sign birth and death certificates;³² in Ohio "physicians" may sign, and from other sections of the medical practice act it would seem that the term includes osteopaths.³³ Statutes in both states limit examinations to commit the insane to physicians licensed to practice medicine or medicine and surgery³⁴ and thus seem to exclude the osteopath. For examining claimants under workmen's compensation laws, the Michigan statute requires a person authorized to practice medicine,³⁵ while the Ohio act provides for a medical adviser without indicating his qualifications.³⁶ An osteopath could not qualify for the position of Director of Health in Ohio where the degree of doctor of medicine is required;³⁷ an osteopath in Michigan could not qualify for the position of State Health Commissioner unless he were considered a registered physician and had practiced for five years, or unless he had the degree of doctor of public health.³⁸

3

In California, Indiana and Massachusetts, the scope of the osteopath's license is almost identical with that of the unlimited practitioner. As might be expected, the education and examination required for licensure are identical, except that the osteopath may take his training in an osteopathic school;³⁹ one of the states, California, has established a different examining agency from that which conducts the regular medical examination.⁴⁰

In these states the osteopath is clearly entitled to use narcotics⁴¹ and

³⁰ The narcotics act uses the term "physician" [13 Mich. Stat. Ann. (1947 Cum. Supp.) § 18.1077] and "physician" is defined as "osteopath" in the same act (id., § 18.1071); 1-A Ohio Gen. Code (Page, 1946) §§ 1274, 12672.

³¹ Ohio Gen. Code (Page, 1946) § 1274.

³² Mich. Op. Atty. Gen. 136 (1912); 10 Mich. Stat. Ann (1937) § 14.574.

³³ Ohio Gen. Code (Page, 1946) §§ 1261-52, 1261-62; also 2 Ohio Op. Atty. Gen. 947 (1921).

³⁴ 10 Mich. Stat. Ann. (1947 Supp.) § 14.810; 2 Ohio Gen. Code (Page, 1937) § 1890-27.

³⁵ 12 Mich. Stat. Ann. (1937) § 17.169.

³⁶ 1-A Ohio Gen. Code (Page, 1946) § 1465-91.

³⁷ 1 Ohio Gen. Code (Page, 1946) § 154-12.

³⁸ 10 Mich. Stat. Ann. (1937) § 14.1.

³⁹ Cal. Code (Deering, 1944) Business and Professions, §§ 2191, 2192; 11 Ind. Stat. Ann. (Burns, Supp. 1947) §§ 63-1306, 63-1316; 4 Ann. Laws of Mass. (Cum. Supp. 1947) ch. 112, §§ 2, 2A.

⁴⁰ Cal. Code (Deering, 1944) Business and Professions, Appx. II, §§ 1, 2. See also note 5, supra.

⁴¹ Cal. Code (Deering 1944 and Supp.) Business and Professions, § 2137 and Health and Safety, §§ 11000, 11500; 4 Ann. Laws of Mass. (1942) ch. 112, §§ 6, 10, id. (1947 Supp.) § 2; 11 Ind. Stat. Ann. (Burns, Supp. 1947) § 63-1316.

other drugs,⁴² practice major and minor surgery,⁴³ administer anesthetics,⁴⁴ and make reports of deaths and births.⁴⁵ It seems that he is competent also to make examinations under workmen's compensation acts. In California, where the workmen's compensation code requires an examination by a "physician," the term is defined to include osteopaths;⁴⁶ in Massachusetts and Indiana, which require examination by a "physician,"⁴⁷ the osteopath has probably complied with the requirements for the physician's and surgeon's license. There is more question as to an osteopath's competency to examine for insanity under the statutes, since in both Massachusetts and California examination is to be made by a graduate from an incorporated medical school,⁴⁸ and a graduate from an osteopathic school might not fall within this category. In determining the osteopath's eligibility to hold state health offices calling for doctors, the same problem of interpretation arises in California, where county health officers must be graduates of a medical school of good standing and repute,⁴⁹ and in Massachusetts, where City Commissioners of Health must be graduates of a medical school approved by the commonwealth.⁵⁰ In Indiana, no statutory provision was found which would cast doubt upon the osteopath's eligibility for such offices.

4

Osteopaths licensed under earlier statutes must pass additional tests in order to benefit from recent enactments in states which have expanded the scope of their activities.⁵¹ There are two matters which seem to be treated in approximately the same way by all statutes; namely, the right

⁴² Cal. Code (Deering, 1944) Business and Professions, § 2137; 4 Ann. Law of Mass. (1942 and Supp.) ch. 112, §§ 6, 10, id. (1947 Supp.) § 2; 11 Ind. Stat. Ann. (Burns, Supp. 1947) § 63-1316.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Cal. Code (Deering, 1944) Health and Safety, §§ 10178, 10400; 1 Ann. Laws of Mass. (1944 and Supp.) ch. 46, § 3, id. (1947 Supp.) § 9; 7 Ind. Stat. Ann. (Burns, 1947 Cum. Supp.) §§ 35-135, 35-137.

⁴⁶ Cal. Code (Deering, 1944) Labor, § 4050, (1947 Cum. Supp.) § 3209.3.

⁴⁷ 4 Ann. Laws of Mass. (1942) ch. 152, § 9; 8 Ind. Stat. Ann. (Burns, Supp. 1947) § 40-2220.

⁴⁸ Cal. Code (Deering, 1944) Welfare and Institution, § 5000; Ann. Laws of Mass. (1942) ch. 123, § 53.

⁴⁹ Cal. Code (Deering, 1944) Health and Safety, § 454.

⁵⁰ 3 Ann. Laws of Mass. (1947) ch. 111, § 26B.

⁵¹ For instance, in Ohio, the statute [1-A Ohio Gen. Code (Page, 1946) § 1274] provides ". . . An osteopathic physician licensed to practice in this state at the effective date of this act shall not prescribe or administer drugs, except anesthetics and antiseptics, until such time as he shall obtain a certificate under the provisions of section 1274 of the General Code. . . ." Another part of this section provides that osteopaths previously licensed who have not been examined in operative surgery may not practice it. This is typical of the provisions usually found.

of the osteopath to use the prefix "Dr.," and the right of his patients to have their confidential communications to him privileged when he is called as a witness in a civil suit. In all the states examined, either the osteopath could use the prefix "Dr." before his name if he followed it with the term "osteopath," or he could use the abbreviation "D.O.," or both.⁵² Some of the states expressly forbid the use of the abbreviation "M.D." by the osteopath,⁵³ and others also forbid the use of the term "osteopath" and the abbreviation "D.O." by other practitioners.⁵⁴ Of all the states examined which accorded statutory privilege to the communications by patients to their physicians,⁵⁵ Michigan was the only one to distinguish between osteopaths and other licensed practitioners.⁵⁶

5

It is difficult to appraise the relative merits of these statutes. The statute of Ohio, one of the two states (among those studied) which grants osteopaths a scope of activity similar to that of the general practitioner, was amended for this purpose in 1943. The statutes of the three states analyzed which grant unlimited licenses to osteopaths, California, Massachusetts, and Indiana, have all been passed within the last sixteen years. It would seem the trend at present is toward statutes which require greater preparation for obtaining osteopathic licenses and which grant a wider scope of activity to the osteopath.

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⁵² Cal. Code, (Deering, 1944) Business & Professions, § 2142; 11 Ind. Stat. Ann. (Burns, 1943) § 63-1311; 10 Mich. Stat. Ann. (1937) § 14.576; 63 Pa. Stat. Ann. (Purdon, 1941) § 270; 16 N.Y. Consol. Laws Ann. (McKinney, 1947) § 6512 (3); Ill. Ann. Stat. (Smith-Hurd, 1934) ch. 91, § 16m; 4 Ann. Laws of Mass. (1942) ch. 112, § 6.

⁵³ E.g., Cal. Code (Deering, 1944) Business & Professions § 2396.

⁵⁴ E.g., Ibid, § 2397; 63 Pa. Stat. Ann. (Purdon, 1941) § 270, but a doctor can practice osteopathic methods if he doesn't advertise himself as an osteopath.

⁵⁵ There is no privilege for any practitioner in Illinois and Massachusetts. The following states provide a statutory privilege for physicians: New York [N.Y. Civil Practice Act (Cahill-Parsans, 1946) §§ 352, 354], Pennsylvania [28 Pa. Stat. Ann. (Purdon, 1930) § 328], Ohio [8 Ohio Gen. Code (Page, 1938) § 11494], Indiana [2 Ind. Stat. Ann. (Burns, 1946) § 2-1714], California [Cal. Code (Deering, 1941) Code of Civil Procedure § 1881].

⁵⁶ In Michigan there is a statutory privilege for persons authorized to practice medicine and surgery [21 Mich. Stat. Ann. (1938) § 27.911]. For an interesting article on the physician's privilege, see Chafee, "Privileged Communications: Is Justice Served or Obstructed by Closing the Doctor's Mouth on the Witness Stand?" 52 YALE L.J. 607 (1943).