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# TORTS-MALPRACTICE-DUTY OF DRUGLESS HEALER TO REFRAIN FROM OR DISCONTINUE TREATMENT

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TORTS—MALPRACTICE—DUTY OF DRUGLESS HEALER TO REFRAIN FROM OR DISCONTINUE TREATMENT—Defendant, a drugless healer licensed under statute as a sanipractor, undertook to treat plaintiff for what both parties realized was diabetes. Defendant followed standard sanipractic procedure, prescribing diets and baths. The treatment was unsuccessful, and plaintiff's health deteriorated greatly. Apparently on the theory that a sanipractor incurs no liability if he follows the accepted methods of his school, the trial court, notwithstanding jury's verdict for plaintiff, rendered judgment for defendant. On appeal, *held,* reversed and remanded, with directions to enter judgment on the verdict. Where a drugless healer knows or should know that his method of treatment is not of a character productive of reasonable success, it becomes his duty to cease and desist from treating the patient and to advise him to seek other relief. *Carney v. Lydon,* (Wash. 1950) 220 P. (2d) 894.

It is the general rule that a physician or surgeon is entitled to have his treatment of his patient tested by the rules and principles of the healing discipline to which he belongs, and not by those of another.[1] In the principal case, defendant sanipractor apparently followed the methods of his school, and the trial court was therefore of the opinion that since the general rule applied to sanipractors, defendant was not liable. The appellate court held that the rule did not apply to sanipractors, and went on to find liability on the ground that, since a drugless healer is limited by the scope of his license, he has a duty to discontinue treatment which he knows is non-beneficial. It is submitted that the appellate court was wrong in its reasoning that the general rule does not apply to sanipractors,[2] but right in its result, since the special standard it set up for drugless

[1] 21 R.C.L. 383 (1918); Cook v. Moats, 121 Neb. 769, 238 N.W. 529 (1931); Fritz v. Horsfall, 24 Wash. (2d) 14, 163 P. (2d) 148 (1945). See annotation, 78 A.L.R. 697 (1931).

[2] Janssen v. Mulder, 232 Mich. 183, 205 N.W. 159 (1925) (chiropractor); Nelson v. Dahl, 174 Minn. 574, 219 N.W. 941 (1928) (chiropractor); State v. Smith, 25 Idaho 541, 138 P. 1107 (1914) (osteopath); Spead v. Tomlinson, 73 N.H. 46, 59 A. 376 (1904) (Christian Science); Bowman v. Woods, 1 G. Greene (Iowa) 441 (1848) (botanic healer). Rule held not to apply to herb doctor, Hansen v. Pock, 57 Mont. 51, 187 P. 282 (1920); nor to clairvoyant, Nelson v. Harrington, 72 Wis. 591, 40 N.W. 228 (1888). See annotation, 78 A.L.R. 697 (1931).

healers is applicable to the entire field of healing, as an exception to the general rule. This exception stems from the nature of the relationship of the healer to the patient, which the law implies is one of trust and confidence.[3] The healer must act with utmost good faith,[4] and may not in any way exploit this trust so as to jeopardize his patient's health. Hence, where the healer knows or should know[5] that (a) the treatment is ineffectual or is likely to be ineffectual,[6] or (b) there is a better or safer method of treatment,[7] or (c) the services of one with greater ability are necessary or advisable,[8] it is his duty to advise the patient[9] of these facts. This duty is absolute and unqualified, and, in an action for its breach, the healer cannot escape liability by showing that other members of his school would have acted as he did.[10] Moreover, in such a case, the doctrines of contributory negligence and assumption of risk would seem to be peculiarly inapplicable.[11]

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[3] 48 C.J. 1133; 41 AM. JUR., Physicians and Surgeons §73; Logan v. Field, 75 Mo. App. 594, 90 S.W. 127 (1898); Tvedt v. Haugen, 70 N.D. 338, 294 N.W. 183 (1940); Wambold v. Brock, 236 Iowa 758, 19 N.W. (2d) 582 (1945). See annotation at 132 A.L.R. 392. There are probably two reasons for treating this relationship as one of trust and confidence: (1) the healer's superior knowledge and education, and patient's relative ignorance of matters of health; and (2) the extreme importance of, and public interest in, the subject matter of this relationship, the patient's health.

[4] See authorities cited in note 3 supra.

[5] It is in this respect that the licensing statute in the principal case [Wash. Rev. Stat. (Rem., 1933) §§10114, 10123, 10124] is important, since it required that in order to qualify for a sanipractic license, the applicant must study certain courses generally taught in medical schools. "The legislature required drugless healers to pursue certain studies in order that they would know enough . . . to recognize cases where their limited methods are inefficacious and the services of a doctor are required." Kelly v. Carroll, (Wash. 1950) 219 P. (2d) 79 at 85.

[6] Logan v. Field, supra note 3 (disease incurable); Kelly v. Carroll, supra note 5.

[7] Even if, as in the principal case, the healer was prohibited from giving that treatment (insulin). See also Vigneault v. Dr. Hewson Dental Co., 300 Mass. 223, 15 N.E. (2d) 185 (1938); Foster v. Thornton, 113 Fla. 600 at 606-607, 152 S. 667 (1933).

[8] Benson v. Dean, 232 N.Y. 52, 133 N.E. 125 (1921) (failure of medical doctor to call in specialist); Tvedt v. Haugen, supra note 3 (same); Small v. Howard, 128 Mass. 131 at 136 (1880); Mallen v. Boynton, 132 Mass. 443 (1882).

Note that some cases, such as the principal case, may qualify under two or all three of these conditions in which the healer has duty to advise his patient.

[9] Query as to result where healer advises his patient as to the facts, and patient, notwithstanding the advice, requests that healer continue treatment. Dicta in principal case and in Kelly v. Carroll, supra note 5, to the effect that healer has duty both to advise and to cease further treatment. Tvedt v. Haugen, supra note 3, and Logan v. Field, supra note 3 say that healer has duty to advise, but are silent as to whether he can continue treatment after advice. In such a fact situation, application of assumption of risk doctrine might be proper.

[10] This is in accord with the general rule that no group, by their common actions, can set up their own standard of care. Marsh Wood Products Co. v. Babcock & Wilcox Co., 207 Wis. 209, 240 N.W. 392 (1932). Since doctors are generally excepted from this rule (see note 1 supra) the principal case thus becomes an exception to an exception to a general rule.

[11] See Kelly v. Carroll, supra note 5, at 90 for discussion of these points.

If, as has been suggested above, this relationship is one of trust and confidence, it would be incongruous to find a patient negligent for relying on either the advice or the silence of his healer; and if the healer is charged with the duty of acting in utmost good