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The Practice of Healing Arts: Some Regulatory Problems

exceptions exist not as tangents or deviations from the general rule but as a defensible development which in fact preserves the equitable functions of that rule and keeps it within the bounds of conscience. It is true, however, that one is not always impressed by the same necessity for the presumption under all the stated relationships. Reason and humanity dictate that it should be applied in the case of parent and child and others closely bound by the family relationship, or where the societal relationship inspires action for the benefit of parties in distress. But it is less clearly indicated where the commercial relation is the tie uniting the actions of the parties. Even in this setting the powers possessed by the director of a corporation or by the member of a partnership argue for a retention of the presumption against reimbursement. In the case of a mere employee not endowed with the latitude of the fiduciary's calling, it is questionable whether the presumption of gratuity should be retained in its present form.

THE PRACTICE OF THE HEALING ARTS: SOME REGULATORY PROBLEMS.*—Like their brothers the lawyers, the doctors of medicine are considerably concerned over the inroads made in their professional practice.[1] The exponents of healing cults which do not recognize the therapeutic principles and methods of medical science have succeeded in winning the confidence and loosening the purse-strings of a substantial number of persons.[2] Medical men profess scorn for their competitors' techniques[3] and apprehension of the results of their

* It will become apparent to the reader that this paper must of necessity concern itself to some degree with the scientific merits of the various forms of medical healing. It is desirable, of course, that an objective approach be made to this problem, especially by the layman, who is neither desirous nor capable of evaluating the respective claims advanced by either organized or sectarian medicine. It is only fair to state, however, that the writer's conclusions are based upon his personal conviction, derived from reading arguments on both sides, that the medical men present a better case. Nevertheless, an effort has been made to be impartial, and if the reader detects any bias on any controversial subject, he is earnestly requested to disregard it.

1. There is a striking similarity in the predicament in which both professions find themselves. Just as lawyers find their practice being whittled away by banks, trust companies, and title companies, so doctors are confronted with the problems of the osteopaths, chiropractors, naturopaths, and faith healers. It was estimated in 1932 that there were 16,000 chiropractors, 10,000 faith healers, 7,650 osteopaths, and 2,500 naturopaths—almost one-fourth of the total number of practising physicians. REED, THE HEALING CULTS (1932) 1. These figures do not include optometrists, midwives, chiropodists, and pharmacists, in themselves numbering well over 100,000. PEEBLES, MEDICAL FACILITIES IN THE UNITED STATES (1929) 16. Members of these groups, however do not profess to cure all disease, but only to perform certain services, and this paper will not be concerned with their activities.

2. It is estimated that over $125,000,000—about 12% of the annual fee bill of the physicians—is paid to drugless healers. Chiropractors receive $63,000,000; osteopaths, $42,000,000; naturopaths, $10,000,000; and faith healers, $10,000,000. REED, *loc. cit. supra* note 1.

3. *E.g.*, Dr. Morris Fishbein, editor of the JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION and HYGEIA, has analyzed the tenets of the healing cults at some length. His conclusions bespeak only the greatest scorn for their theories and dogmas. See especially his FADS AND QUACKERY IN HEALING (1932). Chiropractors counter with statements of repu-

treatments;[4] but the drugless practitioners, secure in the legislative recognition which has been accorded them in almost all states,[5] continue to flourish without appreciable signs of abatement.

Aside from any evaluation of the place of the sectarian in medical science, some very real problems in the regulation of these "healers" are posed for the legislator. Should they be allowed to practise under the prevailing professional and educational standards, or should the standards in any way be revised to fit modern conditions? An adequate study of the problem can best be effected by a brief discussion of the causes, methods, and effects of contemporary regulatory systems.

Constitutional Bases of Regulation

The fundamental power of the state to regulate the practise of medicine and allied methods of healing has been so consistently upheld[6] that it is doubtful whether any constitutional attack from this quarter could be successful.[7] The sovereign jurisdiction of the state over matters of public health

table medical men as to the slight curative effects of drugs, which, they assert, are for the most part confessedly administered for purposes of expediency. TURNER, RISE OF CHIROPRACTIC (1931) 83.

4. The president of the British Medical Association has expressed his fear of the results of drugless treatment, and has cited several cases to indicate the sometimes disastrous results. From his own experience he recounts such instances as the treatment of appendicitis by a chiropractor, resulting in acute peritonitis and death; treatment by a chiropractor of a knee for a large sarcomatus growth in the tibia, resulting in acute dissemination of carcinomata and sarcomata, necessitating amputation, etc. Waring, *Osteopathy, Chiropractic, and Medicine* (1925) 2 BRIT. MED. J. 679, 681.

5. See *post*, p. 445.

6. In Dent v. West Virginia, 129 U. S. 114, 122 (1889), Mr. Justice Field wrote for the court: "The power of the State to provide for the general welfare of its people authorizes it to prescribe all such regulations as in its judgment will secure or tend to secure them against the consequences of ignorance and incapacity as well as of deception and fraud. . . . The nature and extent of the qualifications required [by the disputed statute as a condition to the issuance of a certificate to practice medicine] must depend primarily upon the judgment of the State as to their necessity. If they are appropriate to the calling or profession, and attainable by reasonable study or application, no objection to their validity can be raised because of their stringency or difficulty. It is only when they have no relation to such calling or profession, or are unattainable by such reasonable study and application, that they can operate to deprive one of his right to pursue a lawful vocation." The practical necessity for the exercise of such power by the sovereign was recognized as undeniable, and the court thereafter rejected all constitutional complaints which have challenged the authority of similar medical practice acts on the grounds that such regulation transcends the authority given to the states. Hawker v. New York, 170 U. S. 189 (1898); Watson v. Maryland, 218 U. S. 173 (1900); Collins v. Texas, 223 U. S. 288 (1912); Graves v. Minnesota, 272 U. S. 425 (1926).

7. "According to settled principles, the police power of a State must be held to embrace, at least, such reasonable regulations established directly by legislative enactment as will protect the public health and the public safety." Jacobson v. Massachusetts, 197 U. S. 11, 25 (1905) (dealing with the power to compel vaccination). And Mr. Justice Holmes, in Buck v. Bell, 274 U. S. 200 (1927), took a similar view of a statute requiring the sterilization of feeble-minded inmates of state institutions.

is unchallenged, provided the test of reasonableness is met. Presumably the authority to regulate the practice of the healing arts may be classified as falling within the police power.[8]

Regulation, then, is concededly permissible. But any attempt to outlaw and prohibit the practice of medicine is another matter. No state has ever attempted any such sweeping prohibition; even if any did, it is safe to assume that the act would not receive a judicial blessing. But what about that which in some instances is tantamount to partial prohibition—regulation which is discriminatory in character? Chiropractic, for example, which is the most popular form of drugless healing, has not received the universal sanction of the law-makers as a separate branch of the healing arts. In New York State it has never been granted the official recognition of the legislature.[9] Hence, while a chiropractor clearly practises medicine within the statutory definition,[10] his particular method of healing is not eligible for a restrictive license,[11] and he must obtain a physician's license[12] or be guilty of the crime of practising medicine without a license.[13] This is not technically prohibition of

8. "Besides, there is no right to practice medicine which is not subordinate to the police power of the States." Lambert v. Yellowley, 272 U. S. 581, 596 (1926).

9. An unceasing, but so far unsuccessful, fight has been waged by the chiropractors in the New York legislature in an effort to have individual standards set up for the practice of their profession. No less than thirty-three bills have been introduced in both Senate and Assembly since 1913— at least one every year, with the exception of 1932, 1934, 1935, and 1937. In 1936 alone, three bills were introduced in the Assembly, and one in the Senate. All of the bills died in committee; one (A. Pr. 2880) got back to the floor, was amended, and recommitted. The chiropractors' hopes were raised in 1920, when a bill passed both houses, but it was vetoed by Governor Smith, presumably on the ground that the state retained no control over the regulatory body set up by the bill.

10. N. Y. EDUCATION LAW (1927) § 1250:

"7. The practice of medicine is defined as follows: A person practises medicine within the meaning of this article, except as hereinafter stated, who holds himself out as being able to diagnose, treat, operate or prescribe for any human disease, pain, injury, deformity or physical condition, and who shall either offer or undertake, by any means or method, to diagnose, treat, operate or prescribe for any human disease, pain, injury, deformity or physical condition."

11. Various other drugless healers are accorded specific exemption from the operation of the medical practice act, and are permitted to practise restrictively without the rigorous training required of a physician. Thus, an ostepath or a physio-therapist may be licensed [N. Y. EDUCATION LAW (1930) § 1256] but he may not administer drugs or practise surgery. *Id.*, § 1262, ¶ 2. And the act shall not be construed to prevent the practice of chiropody, dentistry, veterinary medicine or optometry, providing these practitioners are licensed; or prohibit the practise of the religious tenets of any church. *Id.*, § 1262, ¶ 1. But the chiropractor is relegated to oblivion; he is not mentioned in any way.

12. He who would be examined for a physician's license must be prepared for examination in such subjects as anatomy, physiology, hygiene, chemistry, surgery, obstetrics, gynecology, pathology, bacteriology, and diagnosis. N. Y. EDUCATION LAW (1927) § 1257. Seemingly the several chiropractic schools do not require more than a year or a year and a half of resident study, and their teaching does not approximate in scope that of the medical school. FISHBEIN, *op. cit. supra* note 3, at 103. Manifestly the chiropractor would find it difficult, if not impossible, to pass the examination for a physician's license.

13. N. Y. EDUCATION LAW (1927) § 1263.

the practice of chiropractic, since a chiropractor may utilize the methods he has been taught if he obtains a regular physician's license. It is well known, however, that a chiropractor's preliminary training is comparatively slight, so that his chances of passing the regular medical examination are insignificant. Can it thus be said that the New York medical practice act so discriminates against chiropractors as to run afoul of the guarantee of equal protection? The question does not seem to have been finally and authoritatively decided in New York,[14] but several decisions in other jurisdictions have denied the general validity of such contentions.[15] In such a case, the courts are agreed that regulations need not be uniform with respect to all methods and systems of practice, but distinctions are permissible and schools or methods of practice may be exempted from regulations or subjected to peculiar regulations so long as the discrimination is not arbitrary or unreasonable.[16]

Nor is the license to practice, once granted, incapable of revocation at the hands of the state. Statutes which permit revocation by the board which issued the license have been upheld, even though the grounds for revocation are stated in general terms.[17] The efficacy of restrospective application of such statutes has also been considered,[18] and in *Hawker v. New York*[19] the

14. The point was squarely raised in People v. Lee, 151 Misc. 431, 272 N. Y. Supp. 817 (Spec. Sess. 1934), and the court held the statute in this respect constitutional. Similar equal protection arguments were made in the records and briefs in People v. Mulford, 140 App. Div. 716, 125 N. Y. Supp. 680 (4th Dep't 1910), and People v. Ellis, 162 App. Div. 288, 147 N. Y. Supp. 681 (2d Dep't 1914), but the court in each case seems to have rejected the argument, as no mention of it appears in the opinion.

15. Crane v. Johnson, 242 U. S. 339 (1917); People v. Jordan, 172 Cal. 391, 156 Pac. 451 (1916); People v. Witte, 315 Ill. 282, 146 N. E. 178 (1924); Louisiana State Board of Medical Examiners v. Fife, 162 La. 681, 111 So. 58 (1926); People v. Lewis, 233 Mich. 240, 206 N. W. 553 (1925); Saunders v. Swann, 155 Tenn. 310, 292 S. W. 458 (1927); Allison v. State, 127 Tex. Crim. App. 322, 76 S. W. (2d) 527 (1934), *appeal dismissed* 295 U. S. 717 (1935).

16. The limitations to the elasticity of the test of reasonableness are demonstrated in decisions that a statutory requirement of four years of study to obtain a chiropractic license, when the only requirement for other healers is graduation from an approved school, is unconstitutional. People v. Love, 298 Ill. 304, 131 N. E. 809 (1921); State v. Gravett, 65 Ohio St. 289, 62 N. E. 325 (1901); *cf.* People v. Witte, 315 Ill. 282, 146 N. E. 178 (1924). The Illinois medical practice act has also been held unconstitutional in so far as it refuses to license an osteopath not the graduate of a medical school, though he may have studied all the required subjects during his course of study in a school of osteopathy. People v. Schaeffer, 310 Ill. 574, 142 N. E. 248 (1923).

17. Yoshizawa v. Hewitt, 52 F. (2d) 411 (C. C. A. 9th, 1931), 79 A. L. R. 323 (1932). Some contrary decisions have been based upon a judicial interpretation of the vagueness and uncertainty of the words setting forth the grounds for revocation. Green v. Blanchard, 138 Ark. 137, 211 S. W. 375 (1919), 5 A. L. R. 94 (1920) ("advertising . . . with the view of deceiving or defrauding the public"); Czarra v. Board of Medical Supervisors, 25 App. D. C. 443 (1905) ("unprofessional or dishonorable conduct"); *cf.* Sapero v. State Board of Medical Examiners, 90 Colo. 568, 11 P. (2d) 555 (1932).

18. For example, it is no defense in a revocatory proceeding that the board was set up and its powers conferred after the license to practice had been granted. Lawrence v. Briry, 239 Mass. 424, 132 N. E. 174 (1921).

19. 170 U. S. 189 (1898).

Supreme Court upheld the validity of the revocation of a physician's license for the conviction of a felony, though the conviction and the issuance of the license both occurred before passage of the act which made this a ground for revocation. So, regulatory statutes may be operative on practitioners already licensed, whose license may be rescinded if they are not equipped to meet the higher professional standards set up in subsequent legislation;[20] and this is true even if the license was issued prior to the creation of the board with revocatory powers.[21]

Medical Practice Acts

In furtherance of their constitutional powers, all the states have enacted legislation to regulate and limit the practice of medicine.[22] The acts are in general cast in much the same mold: provision is made in each case for the examination and licensing of physicians and surgeons, and, in many cases, of drugless healers. A lack of uniformity among the statutes makes impracticable any protracted analysis of the licensure machinery, although some general observations are necessary for an adequate appraisal.

The examining board is an administrative, not a judicial body;[23] hence its findings as to the unfitness of a prospective licentiate are not conclusive;[24] on the other hand, more weight is given to the board's determination of the reputability of any medical school, and, if its standards are not unreasonable, its action will not be interfered with.[25] And because of the nature of the board, the applicant who is denied a license has his remedy through *mandamus*, not *certiorari*.[26]

The practice again varies in the case of proceedings for the revocation of a license. Generally provision is made for a careful hearing of all the charges, either by the board or a committee thereof, and opportunity is afforded the accused to defend himself.[27] A wide variety of grounds for revocation are

20. Butcher v. Maybury, 8 F. (2d) 155 (W. D. Wash. 1925).

21. Triplett v. State Board of Health, 257 Ky. 848, 79 S. W. (2d) 226 (1935).

22. The medical practice acts of all the states and the District of Columbia are compiled in readily available form in the AMERICAN MEDICAL DIRECTORY (1937).

23. Schireson v. Walsh, 354 Ill. 40, 187 N. E. 921 (1933); Brinkley v. Hassig, 130 Kan. 874, 289 Pac. 64 (1930). It is recognized, of course, that the board in determining whether a license should be issued exercises a quasi-judicial power, but notwithstanding this, it cannot be claimed that the board has usurped the judicial function. People v. Hawkinson, 324 Ill. 285, 155 N. E. 318 (1927).

24. State Board of Dental Examiners v. Savelle, 90 Colo. 177, 8 P. (2d) 693 (1932); Sapero v. State Board of Medical Examiners, 90 Colo. 568, 11 P. (2d) 555 (1932); *cf.* Watkins v. Mississippi State Board of Pharmacy, 170 Miss. 26, 154 So. 277 (1934).

25. State *ex rel.* Kansas City Univ. of Physicians and Surgeons v. North, 316 Mo. 1050, 294 S. W. 1012 (1927).

26. People *ex rel.* Scott v. Reid, 135 App. Div. 89, 119 N. Y. Supp. 866 (1st Dep't 1909). *Cf.* New York Laws 1937, c. 526, abolishing the distinction between *mandamus* and *certiorari*.

27. *E. g.*, in New York, by EDUCATION LAW (1926) § 1265, a committee on grievances is set up to handle any disciplinary proceeding. The proceedings may be instituted by any person, and a copy of the charges is to be served on the accused to enable him to prepare

usually set forth in the statute, ranging from specific misdeeds to what is loosely termed "unprofessional and dishonorable conduct."[28]

Basic Science Acts

The most important and progressive step of recent years toward a more adequate regulatory system has been the enactment of "basic science acts"[29] by nine states[30] and the District of Columbia.[31] The constitutionality of these acts has been uniformly upheld wherever questioned,[32] save in Arizona, where the act was invalidated on technical grounds.[33] In brief, they require of all who seek a license to cure the sick a preliminary examination in certain basic sciences[34] which are deemed essential knowledge to a practitioner of any of the healing arts. Those who successfully conquer this examination are then, and not until then, eligible to be examined and licensed by the board which has supervision over their particular system of practice.

It cannot be maintained that such preliminary requirements place an un-

his defense. The charges are heard by a subcommittee, which reports its findings and recommendations to the grievance committee. If that committee, by unanimous vote, finds the accused guilty of the charges, its recommendations are transmitted to the Education Department, and the regents, if they do not modify the findings, proceed to revoke the license. *Id.*, ¶ 4. The determination, if unfavorable to the accused, is reviewable by *certiorari*. The committee on grievances has the power to issue subpoenas, but its hearings are not conducted under the rules of evidence. *Id.*, ¶ 5.

28. Grounds for revocation in New York, as stated in EDUCATION LAW (1926) § 1264, include such diverse items as conviction of a crime; untrue or deceptive advertising; the use of fraud and deceit in the physician's practice; or the fact that he is an habitual drunkard or drug addict; or that he has procured or performed a criminal abortion.

29. In 1915, Tennessee enacted a law providing for the preliminary examination of would-be practitioners of the healing arts, as a prerequisite to eligibility for the regular examinations. Tenn. Acts 1915, c. 24. This was in reality the precursor of the modern basic science act. The act, with modifications, is still in effect [TENN. CODE ANN. (Williams 1934) §§ 6908-6917] but it is not generally classified as a basic science act.

30. Beginning in 1925, basic science acts have been enacted chronologically as follows: Wis. Laws 1925, c. 284; Conn. Laws 1925, c. 161; Wash. Laws 1927, c. 183; Minn. Laws 1927, c. 149; Neb. Laws 1927, c. 164; Ariz. Laws 1933, c. 84; Ore. Laws 1933, c. 158; Iowa Acts 1935, c. 17. According to the Bureau of Legal Medicine and Legislation of the American Medical Association, similar legislation was introduced in 1937 in Colorado, Georgia, Kansas, Maine, Michigan, New Mexico, Oklahoma, Tennessee, Utah, West Virginia and Wyoming. (1937) 108 J. AM. MED. ASS'N 1431.

31. 45 STAT. 1326 (1929).

32. State v. Broden, 181 Minn. 341, 232 N. W. 517 (1930); State *ex rel.* Shenk v. State Board of Examiners in the Basic Sciences, 189 Minn. 1, 250 N. W. 353 (1933); State v. Wehinger, 182 Wash. 360, 47 P. (2d) 35 (1935).

33. Estes v. State, 58 P. (2d) 753 (Ariz. 1936). The law was subsequently re-enacted at a special session of the legislature, and approved November 27, 1936.

34. The subjects required for examination include: anatomy, pathology and physiology (required in all states); chemistry (seven states); hygiene and bacteriology (six states); and diagnosis (two states). It is to be noted that these subjects test the applicant's knowledge of fundamental sciences; his ability to apply this knowledge in treatment of a particular disease is not put to the test until he is examined by the regular board.

just burden upon the applicant,[35] and their essential fairness is vouched for by all, however grudgingly.[36] Nor can any charges of prejudice be lodged against the basic science boards, the examiners of which are generally selected from the personnel of varied educational institutions, and are not identified with any particular system of practice.[37]

The Drugless Healers

The most perplexing problems in this field arise not out of the regulation of organized medicine. Uniformly high standards are now being successfully maintained for physicians and surgeons, so that there is a fair presumption that the licensed medical man is well equipped to combat disease and human ailments. Such, unfortunately, is not true in the case of the drugless healers. The branches of medical sectarianism are many, and while undoubtedly each sect has some virtues, the impartial observer cannot but be impressed with the damning evidence presented by organized medicine in support of its thesis that the theories of the sectarians are based upon unsound scientific premises.

Osteopathy,[38] of all the drugless healing methods, has to recommend it the highest educational and professional standards, as a result of which it is recognized by all the states.[39] Provision is made in each state for an examining board[40] to test the merits of the applicants who have suitable

35. From the fact that only 13.7% of would-be physicians failed the basic science examinations in 1936, it is evident that the examinations are not made insuperably difficult. Of course, the physician is better prepared than the chiropractors and osteopaths; they have more reason to agitate against the extension of such statutes. Their mortality rate in the 1936 examinations was fairly high; 56.3% of the osteopaths, and 73.3% of the chiropractors, failed. Holloway, *Qualification in the Basic Sciences* (1936) 31 AM. MED. ASS'N BULL. 164.

36. A leading osteopath has said: "The basic science bill is the most difficult legislation that has ever confronted our profession, for it appeals to disinterested minds and seems absolutely fair to all concerned. No telling arguments in opposition have as yet been produced." Quoted in Lehnhoff, *Basic Science Law in Nebraska* (1936) 31 AM. MED. ASS'N BULL. 54, 55.

37. Holloway, *supra* note 35, at 166.

38. Osteopathy was founded in 1874 by Andrew T. Still who theorised that disease was caused by physiological discord and deviation from the normal—a structural maladjustment that could be cured by manipulation; and all disease is caused by impeded circulation of the blood. BOOTH, HISTORY OF OSTEOPATHY AND TWENTIETH CENTURY MEDICAL PRACTICE (1924) 398-9.

Of all the healing cults, osteopathy has approached nearest to the borderline separating drugless healing from medicine. Osteopaths have tended more and more toward an acceptance of the principal tenets of physicians, until they themselves confess that their manipulative treatments have now degenerated into but one more therapeutic agent, to be utilised by physicians the same as drugs, surgery, or diet. The future of osteopathy as a separate and distinct school of healing is problematical. REED, *op. cit. supra* note 1, at 11-17.

39. Vermont was the first state to give legislative sanction to the practise of osteopathy. Acts 1896, no. 99. It is said that this favor was a token of gratitude from several state officers who had responded favorably to treatment by an itinerant osteopath. REED, *op. cit. supra* note 1, at 25.

40. The composition of the examining board varies: in twenty-eight states it is made up solely of osteopaths; in thirteen states and the District of Columbia, of medical men

preliminary education.[41] The slight majority of states regulate the scope of the osteopath's practice, but in many cases he is permitted the use of drugs and surgery.[42]

If we are to believe the charges hurled against chiropractic[43] by medical men,[44] chiropractors are indeed fortunate in having won some degree of legal recognition[45] in forty-two states.[46] Undeniably their professional and educational standards[47] are considerably lower than those of the medical men, and even of the osteopaths.[48] They present a very real problem, especially in the states which do not license them. There are almost 1,500 chiropractors in New York State alone,[49] all of whom are presumably guilty of the crime of practicing medicine without a license; but their apprehension of prosecution is so slight that over one hundred advertise in the classified telephone directory for New York County alone. Juries have exhibited considerable reluctance to convict these practitioners; and when the state, discouraged by the uniform failure of its criminal prosecutions, has turned to the civil courts for injunctive relief, equity has refused its aid.[50]

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and osteopaths jointly, the former predominating; and in seven states, among them New York, of medical men alone.

41. All states except three require a high school education or its equivalent; five states and the District of Columbia require two years of college in addition. It is to be remembered that in several jurisdictions candidates must also surmount the basic science hurdle.

42. The present trend of legislation is not toward forbidding the osteopath the use of therapeutic agents commonly employed by physicians and surgeons; it is quite the contrary. See REED, *op. cit. supra* note 1, at 26.

43. Chiropractic attributes disease to subluxations or displacements in the spinal vertebrae, which result in pressure against the various nerves which emanate therefrom. Disease is the effect, and the causes can therefore be removed by manipulating the subluxated vertebrae into their proper position. The theory was introduced by D. D. Palmer in 1895, and is rejected by medical science with such absolute finality that one court has been led to say: "The prejudice existing against chiropractors by medical men and osteopaths is known to be intense and in many cases very unreasonable." People v. Love, 298 Ill. 304, 313, 131 N. E. 809, 812 (1921).

44. *E. g.*, see FISHBEIN, *op. cit. supra* note 3, c. 8.

45. In thirty-one states and the District of Columbia the chiropractor is examined by a separate board made up of chiropractic practitioners; in eleven of the remaining states he is tested by the state board of medical examiners in the same subjects as those required of prospective physicians, with the exception of major surgery, therapeutics, and materia medica.

46. Delaware, Louisiana, Massachusetts, Mississippi, New York and Texas do not license chiropractors as such. If the chiropractor wishes to practice lawfully in those states, he must secure a regular physician's license—after which he is free to employ any methods of treatment he desires.

47. A detailed analytical study of chiropractic schools made on behalf of the Committee on the Costs of Medical Care, has shown conclusively that the chiropractic institutions are deficient in clinical and laboratory facilities, that the brand of teaching is inferior and the subjects themselves taught only superficially. See REED, *op. cit. supra* note 1, c. 3.

48. The majority of states require a high school education and eighteen months' graduate study. But even the chiropractors who have completed this course have experienced considerable difficulty with the basic science examinations: 73% have failed on the average over a ten-year period. Holloway, *supra* note 35, at 170-171.

49. REED, *op. cit. supra* note 1, at 52.

50. In People *ex rel.* Bennett v. Laman, 250 App. Div. 660, 295 N. Y. Supp. 728 (3d

The faith healers of various religious sects have been accorded exemption from the medical practice acts of thirty-six states and the District of Columbia,[51] nor are they affected by the basic science acts.

Naturopathy,[52] a generic term applicable to a multitude of health fads and cults,[53] is recognized in seven states[54] where the naturopaths are examined and licensed[55] as limited practitioners after a high school education and graduation from a naturopathic institution. In those states having basic science boards, applicants must of course first succesfully cope with their examinations.

Conclusion

It is safe to say that little fault can be found with contemporary licensure and regulatory systems so far as the medical men proper are concerned. Like the lawyers, the preliminary educational standards of physicians and surgeons have been consistently raised through the years, with results that have been beneficial to both the profession and the public.

Experience has demonstrated, however, that attempts at regulation of the drugless healers through the medium of considerably lower standards have not yielded such happy results. One is forced to the conclusion that the widespread recognition accorded them by our legislatures is justified by neither their professional qualifications nor the effectiveness of their methods. That they have achieved a sizeable degree of popular support, whatever may be the cause therefor,[56] is undoubtedly a mark in their favor, but that alone does not conclusively prove them worthy of a legislative *carte blanche.*

Dep't 1937), the court refused to enjoin the defendant chiropractor from continued practice, in accord with the well established view that equity will not substitute its relief for the criminal processes.

51. In ten of these states Christian Science practitioners alone receive the benefit of the exemption; the other states give a blanket exemption to spiritual ministration, treatment by prayer, or "the practice of the religious tenets of any church" [N. Y. EDUCATION LAW (1927) § 1262, ¶ 1, subd. 8]. In spite of the fact that faith healers receive compensation for their services, there seems to be no valid reason why they should be made to conform either to the basic science or to the medical practice acts. See SMITH, CHRISTIAN SCIENCE HEALING NOT MEDICAL PRACTICE (1915).

52. Naturopathy traces its lineage to German healers of the last century who believed that nature and natural agents—sunlight, water, air, etc.—were the greatest and most effective healing agents. REED, *op. cit. supra* note 1, at 63.

53. Naturopathy embraces over sixty different varieties of healing methods, ranging from ordinary diet and gymnastic fads to such mouth-filling therapeutic devices as biodynamochromatic diagnosis.

54. Connecticut, District of Columbia, Florida, Oregon, South Carolina, Utah, and Washington.

55. In all these jurisdictions except South Carolina, Utah, and Washington, applicants are examined and licensed by a separate naturopathic board.

56. Doctors have claimed that the huge popular success of the healers is due to a variety of psychological conditions, such as the patient's natural awe and fear of medical matters, coupled with his desire for a firm-voiced diagnosis and dogmatic assurance of a positive cure. Waring, *Osteopathy, Chiropractic, and Medicine* (1925) 2 BRIT. MED. J. 679, 681. Of course, there are many more reasons than these, not the least of which is the average doctor's reluctance to become concerned over the patient's minor ailments—minor, that is, to all but the patient.

The most satisfactory theoretical solution of the problem, it has been suggested,[57] lies along non-legal lines—education of the public as to the capabilities and limitations of the drugless practitioners. The practical difficulties inherent in such a scheme are obvious. On the other hand, there is no valid reason why the legislature should not be able to cope with the problem, if the proper type of legislation is employed for that purpose.

Prohibition, even assuming it to be constitutionally possible, is not desirable. Drugless practitioners have a perfect right to practise within limits, and it is extremely doubtful whether any attempt to legislate them out of existence would reflect the popular will. Doubtless many of their pseudo-scientific theories are absurd and fallacious; but medical men are beginning to realize that they have much to learn from the healers, especially in the fields of physical therapy[58] and psychotherapy.[59]

The most effective remedy is undoubtedly found in the basic science acts. They do not prohibit; they regulate, and in a manner which cannot be termed other than fair and impartial. They make the completely reasonable demand that one who would treat the human body for its diseases should have a fundamental knowledge of the structure and workings of that delicate machine. Before any healer can treat an ailment adequately, he must know what it is; and the drugless practitioners are acknowledgedly the least proficient and most ill-equipped in the field of diagnosis. The basic science acts are primarily designed to correct this deficiency, and their enactment in all jurisdictions would be some assurance that the many undesirables would be weeded from the ranks of drugless practitioners.

Whereas the medical practice acts are so framed as to make convictions of unlicensed practitioners difficult, the basic science acts are provided with enough teeth to make prosecution for their violation generally successful, and the juries are allowed little room to bring their sympathies into play.[60] This factor alone should induce a rousing welcome for a basic science law in New York. If such a law were enacted, it would follow that chiropractors could at least be granted the restricted license they have so long sought, for then licensing of the practitioners sufficiently well equipped to hurdle the basic science examinations should cause the legislative conscience no qualms.

57. This is suggested by REED, *op. cit. supra* note 1, at 118.

58. It was discovered by one doctor that many patients resented the apparent superficiality of the doctor's examinations and were attracted to osteopaths and chiropractors by their willingness to give the patient a complete physical examination. Beardsley, *Therapeutic Value of a Complete Physical Examination* (1925) 28 ATLANTIC MED. J. 647. And undoubtedly many other therapeutic agents habitually employed by drugless practitioners contain real medical worth, if only of a suggestive nature, and physicians and hospitals are becoming increasingly cognizant of their value. *E.g.*, see FISHBEIN, *op. cit. supra* note 3, c. 20.

59. Undoubtedly Christian Science, New Thought, and other types of faith healing have done important ground work in the science of psychotherapy—*i.e.*, the treatment of the accompanying mental illness which is so important a factor in all diseases. JANET, PSYCHOLOGICAL HEALING (1925) 97.

60. *Proceedings of Federation of State Medical Boards* (1931) 96 J. AM. MED. ASS'N 1408.