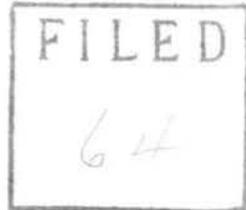


OSTEOPATH: Right to practice medicine & surgery
Write prescriptions.

April 10, 1933.



Hon. M.E. Montgomery,
Prosecuting Attorney - Scott Co.,
Benton, Missouri.

Dear Sir:

Your letter reads as follows:

"Complaint has been made to me that a certain osteopath in this county has been issuing and prescribing medicines for his patients, and it is complainant's idea that this osteopath is violating the law relating to practicing medicine, and that he should be dealt with under the provisions of Section 9118, R.S. 1929 ***"

The legally historic setting of the battle between the different classes of our medical brethren discloses that like Banquo's ghost, it will not down. As I read the Missouri decisions, often times the disciples of the elder school of medicine have fought their way into the forum of the Missouri Appellate Courts hoping to have their judicial legal brethren settle the question whether or not an osteopath is a physician entitled to all the privileges and standing of those who as healers of human ills for centuries have used only drugs and the surgeon's blade, but so far the Missouri Appellate Courts have not squarely decided this question, and the fond hopes of a victory for one side or the other have, beneath the shadow of some technical point, vanished like the childish vision of a dream.

This contest, no doubt, grew out of the high standard of ethics set by the older school of medicine, to whose labor and patience and skill along with the factors of hygiene and advanced physical comfort, we owe the lengthened span of life of this generation in which men now have an average working life double what it was three centuries ago when "old John of Gaunt", time honored Lancaster, was a patriarch at 58, and Admiral Coligny, murdered at 53, was described by his contemporary biographer as a "very old man"; but now at the age of 80 life "seems but just fair ripeness for the sickle", and so medicine and the medical profession must stand first as benefactor of the human race; and so we laymen look with concern on these clashes between classes of our medical schools and will cast our benediction on the close thereof.

You are confronted with the question whether or not an osteopath licensed in Missouri under Chapter 102, Article I, R.S. of Mo., 1929 to practice osteopathy only, by issuing medicine or prescriptions to his patients, violates the provisions of Chapter 53, Article I, R.S. of Mo., 1929 relating to practice of medicine and surgery and which Chapter 53, Article I provides for licenses to the older school of medicine. In briefer language, can a Missouri licensed osteopath issue medicines and prescriptions to his patients? If there are any decisions of the Supreme Court or the Courts of Appeals in Missouri directly deciding this question, I have been unable to find same.

Chapter 102, Article I, R.S. of Mo., 1929 provides for licensing those qualifying thereunder to practice osteopathy in Missouri, but the first section of said chapter and article reads as follows:

"The system, method or science of treating diseases of the human body, commonly known as osteopathy, and as taught and practiced by the American School of Osteopathy of Kirksville, Missouri, is hereby declared not to be the practice of medicine and surgery within the meaning of Article I of Chapter 53 and not subject to the provisions of said article."

There are, as you doubtless know, two recent Court of Appeals decisions that touch upon but do not decide whether or not a Missouri licensed osteopath can issue medicine and prescriptions to his patients. In

State v. Carlstrom, 224 M.A. 439

the defendant, a licensed osteopath was charged by information filed, with violating the law by practicing medicine by issuing medicines and prescriptions to his patients without having a license from the State Board of Health as provided for in what is now Chapter 53 of Article I, R.S. of Mo., 1929. To this criminal information defendant filed a Plea in Abatement alleging he was a graduate of the American School of Osteopathy of Kirksville, Mo. and licensed by the State Board of Osteopathic Registration (as provided for by Chapter 102, Article I, R.S. of Mo., 1929) to practice in Missouri; that he issued medicine and prescriptions to his patients because the Kirksville college of osteopathy taught the disease for which he treated the patients as an osteopath called for the use of the medicines he issued and prescribed; the Plea in Abatement further alleged that the issuance of the medicines and prescriptions by the defendant was not the practice of medicine as provided for in Chapter 53 of Article I, R.S. of Mo., 1929. The State filed a demurrer to the Plea in Abatement. The Court overruled the demurrer and sustained the Plea in Abatement. The State appealed, and the Springfield Missouri Court of Appeals May 20, 1930 decided the case and held, as the demurrer admitted the defendant was not practicing medicine within the terms of Chapter 53, Article I, R.S. of Mo., 1929, the trial court rightly sustained the Plea in Abatement, and in the opinion the Court said:

"It was not, under these pleadings, for the trial court to say that an osteopathic physician had a right under the law to prescribe these particular drugs, for we think the State admitted it by its demurrer, and we think it is not for us to say now whether the facts pleaded in the plea in abatement are true or not. In other words we think a determination of this case does not settle and cannot settle how far an osteopathic physician may go in writing prescriptions and issuing drugs in his profession, and we do not mean for this opinion to be construed as holding that an osteopathic physician has an unlimited right to prescribe and issue drugs. We are simply saying that under the pleadings as submitted here the court did not err in sustaining the plea in abatement."

Here the Court says, of its own opinion, "This case does not settle and cannot settle how far an osteopathic physician may go in writing prescriptions and issuing drugs in his profession."

The next and last case so far as I can ascertain is

State v. Reisman, 225 M.A., 637

which was a prosecution for unlawful practice of medicine against an osteopath duly licensed to practice osteopathy in Missouri. The defendant filed a Plea in Abatement substantially the same in form as in the above cited case in 224 M.A., 439. The State demurred and Plea and demurrer were submitted without hearing evidence upon the Plea in Abatement. The Court overruled the demurrer and sustained the Plea in Abatement. Motion for new trial was timely filed, overruled, and proper affidavit for appeal in proper time filed. The Kansas City Court of Appeals on April 6, 1931 decided the case and held no right of appeal existed in behalf of the State from a judgment or order of the trial court sustaining a sufficient plea in abatement, and the Court refused to decide any question in the case because it took no cognizance of the appeal. (225 M.A., l.c. 642-3)

The courts in different states have taken opposite sides on the question you submit and each has with judicial vigor and sometimes with legal eloquence maintained their respective positions. A fine legal review of the questions litigated between osteopathic and other schools of medicine will be found in the exhaustive opinion of a Federal Judge in the case of

Waldo v. Poe, Collector of Internal Revenue
14 F. (2d) 749

wherein the entire field of battle is surveyed and the victories of either side catalogued and the present legal condition set forth.

The Missouri cases from the earliest to the latest show the teachings of the osteopathic school have been gradually enlarging, thereby approaching the curriculum of the older schools of medicine

and which condition is tersely and clearly stated by the court in the case of

State v. Bonham, 93 Wash. 489, 161 Pac. 377,
L.R.A. 1917, D. 996

wherein at p. 381 of the Pac. Rep., it is said:

"When tested by the foregoing definitions it is manifest that the practice of osteopathy, as it was originally understood and as it was understood at the time of the enactment of our Medical Act, did not sanction the internal administration of medicines or the surgical use of the knife as a means for curing diseases. *** A perusal of the successive catalogues of its schools will show that their teachings are gradually being expanded, and that the more modern of them now teach in some degree much that is taught in the older schools of medicine. The parent school has been more marked in this respect than perhaps any of them. It now teaches that in 'child birth lacerations' in 'certain types of congenital deformities, certain kinds of tumors, etc., surgery must step in', and that surgery must be resorted to for the removal of tissues so badly diseased or degenerated that regeneration is impossible by the process of adjustment. But this advance is modern. ****"

Discussing the legal meaning of the section which is now Chapter 102, Revised Statutes of Mo., 1929, recognizing osteopathy as a method of treating diseases, our Court in 240 Mo., l.c. 353, said:

"Our statute, already recognizes osteopathy as a system, method or science of treating diseases of the human body', and the defendant's school as the exponent of its method and practice. It also expressly authorizes persons having diplomas from that or any other legally chartered and regularly conducted school of osteopathy to treat diseases of the human body according to such method.

The supreme courts of New York, Illinois, Wisconsin, Connecticut, North Carolina and the District of Columbia recognize an osteopath as a "physician", as shown by the following cases:

Bandell v. Health Dep't., 193 N.Y. 133, 85 N.E. 1067
21 L.R.A. (N.S.) 49;
People ex rel Gage v. Simian, 278 Ill. 256, 115 N.E. 817;
State v. Schmidt, 138 Wis. 53, 119 N.W. 647;
Towers v. Glider and Levin, 101 Conn. 169, 125 A. 366,
40 A.L.R. 1263;
In Re Hunter, 60 N.C. 372;
State v. Johnson, 84 Kan. 411, 114 Pac. 390, 41 L.R.A.
(N.S. 539);
Howerton v. District of Columbia, 53 App.D.C. 230, 289 F. 628

Section 13519, Chapter 102, Revised Statutes of Missouri, 1929, as to osteopaths, provides as follows:

"Every person holding a certificate from the State Board of examination and registration shall have it recorded in the office of the county clerk in the county in which he expects to practice, and in the cities of St. Louis, Kansas City and St. Joseph they shall record the same with the same official which records the certificate of graduates of any other school of medicine, and the date of the recording shall be indicated thereon."

The regulations of the Federal Government approved April 1, 1931 by the Secretary of the Treasury and the Attorney General of the United States permit osteopathic physicians to qualify on same basis as physicians of other schools of medicine for permits to prescribe and use intoxicating liquors for medicinal purposes in so far as same is permitted by state law. In twenty-two states the prescription by any physician of liquor is prohibited; Missouri is not one of those states. In the remaining states under Federal rules physicians of any school of medicine authorized under their state law to administer and prescribe drugs and therapeutics agencies of therapeutic value internally for the cure or relief of diseases and who are so engaged may secure permits to prescribe and use intoxicating liquor for medicinal purposes.

Your letter further states: "In view of the provisions of Article 1 of Chapter 102, R.S. 1929, relating to the examination and registration of osteopaths, and particularly Section 13514, defining osteopathy as a "method or science of treating diseases of the human body, as taught and practiced by the American School of Osteopathy of Kirksville, Missouri", I am wholly unable to determine whether this person is violating the law or not."

It goes without saying no one can forecast what our Supreme or Courts of Appeals may finally decide on this question. My opinion is, one licensed to practice osteopathy in Missouri by the Missouri State Osteopathic Board can, as an osteopath under the provisions of Chapter 102, Article I, R.S. of Mo., 1929 and not otherwise, and not under the provisions of Chapter 53, Article I, R.S. of Mo., 1929, issue medicines and prescriptions to those he treats in the regular course of an osteopathic practice, provided the medicines or prescriptions he issues for the disease or diseases he is treating are the medicines and prescriptions a legally organized and operating osteopathic college which the practitioner attended regularly teaches are a part of the regular osteopathic treatment for the disease or diseases the practitioner issued said medicines or prescriptions for.

If I am right in my conclusion that our upper courts in Missouri have not definitely settled this question, you, as a Prosecuting Attorney, would be wholly within your official prerogatives if on an affidavit filed with you, you should file an information charging

a violation of the statute by an osteopath who issues medicines or prescriptions for his patients. On the other hand, at the trial you would probably be met with the same situation which confronted the prosecuting officers in the two Court of Appeals cases I have hereinabove referred to.

If I can aid you further, advise me.

Yours very truly,

EDWARD C. CROW

APPROVED:

Attorney General

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