

PHYSICIANS:) OBSTETRICS: Who may practice
AND) in Missouri.
SURGEONS:)

July 29, 1943

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Honorable James Stewart, M. D.
State Health Commissioner
State Board of Health
Jefferson City, Missouri

Dear Dr. Stewart:

We are in receipt of your letter of July 19th, 1943,
requesting an opinion, which letter is as follows:

"A Federal enactment of H. R. 2935 approved July 12th, 1943, appropriated certain funds to the Department of Labor, Children's Bureau, for the fiscal year 1944 for grants-in-aid to State Health Departments to carry on state Maternal and Child Health services and Emergency and Maternity and Infant Care services within the jurisdictions of individual states. H. R. 2935 as finally approved contained the following provisos:

"Provided, That no part of any appropriation contained in this title shall be used to promulgate or carry out any instruction, order, or regulation relating to the care of obstetrical cases which discriminates between persons licensed under State law to practice obstetrics.

"Provided further, That the foregoing proviso shall not be so construed as to prevent any patient from having the services of any practitioner of her own choice, paid for out of this fund, so long as State laws are complied with."

July 29, 1943

"Prior to the enactment of this law the Children's Bureau, Department of Labor, Washington, D. C., required of the various State Health Agencies to meet certain standards for practitioners participating in any program that was subsidized, in part or in full, from Federal grants-in-aid under the Social Security Act as amended in 1939. Following the regulations of the Children's Bureau, The State Board of Health, wrote and submitted for approval a plan for administration of the Emergency Maternity and Infant Care Program for the fiscal year 1944. This plan, a copy of which is enclosed, was approved by the Children's Bureau, Washington, D. C., and was set in operation by the Division of Child Hygiene, of the State Board of Health, as of June 21st, 1943. Using Federal funds appropriated under Public Law # 11, approved as of March 18th, 1943, (a copy of which may be found in the Federal Register, Volume 8 # 62, Page 3859, Title 42-Public Health, dated March 30th, 1943), the State Board of Health received through the State Treasurer of the State of Missouri, the sum of \$30,000.00, known as Fund E, to carry out the Emergency Maternity and Infant Care Program for the State of Missouri. All subsequent funds from the Children's Bureau as grants-in-aid must necessarily come from appropriations as found in H. R. 2939.

"The State Board of Health wished to cooperate with the Children's Bureau, Washington, D. C., in carrying out the provisions of the state Emergency Maternity and Infant Care Plan. H. R. 2935 by its proviso confuses our interpretations as to standards of medical services for obstetric care as provided under this program. Will you please review the Statutes of Missouri and designate to the State Board of Health those individuals that may practice obstetrics.

Honorable James Stewart, M. D. (3) July 29, 1943

"It is necessary that the State Board of Health submits to the Children's Bureau a statement of legality from the office of the Attorney General of Missouri before the 1944 Maternal and Child Health plan and budgets may become effective. Therefore, may I request as early a reply from your office as possible."

Section 9981 R. S. Missouri, 1939, provides as follows:

"It shall be unlawful for any person not now a registered physician within the meaning of the law to practice medicine or surgery in any of its departments, or to profess to cure and attempt to treat the sick and others afflicted with bodily or mental infirmities, or engage in the practice of midwifery in the state of Missouri, except as hereinafter provided."

Section 9983 R. S. Missouri, 1939, providing for the examination of physicians, reads in part as follows:

" * * * The medical examination * * * shall embrace the subjects of anatomy, chemistry, physiology, therapeutics, obstetrics, * * * * * ." (Underscoring ours.)

Section 9993 R. S. Missouri, 1939, provides, in part as follows:

"It shall be unlawful for any person to practice midwifery in this state before receiving a license to do so. Every person desiring to practice midwifery as a profession shall make application to the state board of health for examination and pay a fee of five dollars. And upon passing an examination satisfactory to said board upon the subject of obstetrics, shall

receive a license to practice as above provided. * * * * *

Section 10042 R. S. Missouri, 1939, declaring osteopathy not to be the practice of medicine, is 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 1 of chapter 59 and not subject to the provisions of said article."

This section first appears in Laws of Missouri, 1897, at page 206.

Section 10044 R. S. Missouri, 1939, providing for the examination of osteopaths, in enumerating the subjects, is, in part, as follows:

" * * * The board shall subject all applicants to an examination in the subjects of anatomy, physiology, physiological chemistry, toxicology, osteopathic pathology, diagnosis, hygiene, obstetrics and gynecology, surgery, principles and practice of osteopathy, and such other subjects as the board may require: * * * * *"

Section 10046 R. S. Missouri, 1939, provides as follows:

"Osteopathic physicians shall observe and be subject to the state and municipal regulations relating to the control of contagious diseases, the reporting and certifying of births and deaths, and all matters pertaining to public health, and such reports shall be accepted by the officer or department to whom such report is made."

Honorable James Stewart, M. D. (5) July 29, 1943

The foregoing section, in requiring that osteopaths report and certify births, indicates a legislative intent to recognize their right to practice obstetrics, since the same burden and authority is placed on midwives, nurses and physicians. (See Section 9994 R. S. Missouri, 1939).

Whether or not osteopaths are authorized to practice obstetrics depends principally upon the construction of Section 10042, supra. The system, method, or science, of osteopathy is limited to that which was taught and practiced by the American School of Osteopathy at Kirksville, Missouri, probably at the time this statute was passed in 1897.

In construing a statute on the same subject in the state of Kansas, which statute contained a similar provision, the Supreme Court of Kansas, in the case of State ex rel. Beck, Attorney General v. Gleason, 79 Pac. (2d) 911, 1. c. 916, gave said provision the following construction:

"1. (a) Is the osteopathic statute prospective in operation, or (b) are osteopathic physicians limited to the state of the science and art as taught and practiced in 1913, when the statute was enacted? Answering the first part of this question, (a), the statute was prospective in operation; that is to say, it was designed to operate in the future. After the enactment of our first statute recognizing osteopathy as a system or school of thought and practice for the treatment of the sick, injured, or afflicted, no one could practice osteopathy lawfully in this state unless he held a certificate authorizing him to practice osteopathy issued by the state board authorized by statute to issue such certificates. From 1901 to 1913 this was the state board of medical registration and examination. Since 1913 it has been the state board of osteopathic registration and examination. The statute did not operate retrospectively so as to punish those who had practiced osteopathy previous to the effective date of the statute. (b) Osteopathic physicians, meaning by that term those to whom certificates have been issued authorizing them to practice osteopathy in this state by a state board

Honorable James Stewart, M. D. (6) July 29, 1943

authorized to issue such certificates, are limited to the practice of osteopathy in harmony with the fundamental principles of osteopathy, or what is sometimes spoken of as the science or system of osteopathy (G. S. 1935, 65-1206), as generally known and understood and as taught in osteopathic schools or colleges of good repute in 1901 and 1913. Osteopaths, in common with all scientific and professional men, are expected to continue to study, to make progress, to learn more about their profession, and to apply such knowledge in their practice, but they are still engaged in the practice of osteopathy, as that science or system was known and understood when our statutes above mentioned were enacted. They are not authorized to practice optometry (State ex rel. v. Eustace, 117 Kan. 746, 233 P. 109), or any of the other professions which require a specific certificate of authority. If, as suggested by counsel for defendant, osteopathy has abandoned its fundamental opposition to drug therapy and operative surgery (meaning by this term surgery by the use of surgical instruments), and now includes the use of those things in its system, that fact never has been recognized by the legislature of this state. Our statutes continue to recognize the 'practice of osteopathy' and the 'practice of medicine and surgery' as separate and distinct things. A certificate authorizing one to practice osteopathy, whether issued prior to 1913 by the board or medical registration and examination, or since that time by the board of osteopathic registration and examination, never has been recognized by our statutes, nor by our courts, as authorizing its holder to engage in the 'practice of medicine and surgery' in this state."

The same general conclusion was reached by the Supreme Court of Kansas in the case of State ex rel. v. Moore, 117 Pacific (2d) 598.

Honorable James Stewart, M. D. (7)

July 29, 1943

At our request, the Missouri State Board of Osteopathic Registration and Examination furnished us with the following letter:

"The Missouri State Board of Osteopathic Registration and Examination has investigated the provisions of the Statutes of Missouri pertaining to osteopathic teaching, examination and practice as originally enacted in 1903, (for more than forty years) and revised or as amended to date, and reports, that

"Each college recognized as reputable has satisfactorily taught obstetrical pre-natal and post-natal care.

"We have examined all records and have found the following to be true according to our records: that each Applicant has had a written examination in obstetrics and has passed that examination before a certificate to practice osteopathy was issued and as required in the Missouri Statutes Section 13516 to 13521-A. (R. S. Mo. Statutes 1939)

Respectfully yours,

Missouri State Board of Osteopathic
Registration and Examination

A. B. Cooter, D. O.
President

F. C. Hopkins, D. O.
Secretary

SEAL

By direction of the Board
In Session, St. Louis, Missouri
July 24, 1943."

Chapter 61 of the Revised Statutes of Missouri, 1939, provides for a State Board of Nurse Examiners, and sets out the general qualifications for the examination and issuance of licenses to nurses.

Section 10032 R. S. Missouri, 1939, provides as follows:

"The Board shall issue a license to practice as a registered nurse or registered obstetrical nurse in the state of Missouri.

"1. Any person who shall be admitted to and pass the board's examination therefor.

"2. Any applicant of good character from another state or a foreign country who shall pay a fee of twelve dollars (\$12.00) and submit to the board satisfactory evidence, verified by oath if required, of due registration, as a registered nurse or by another state or country having equal requirements or if in the judgment of the board said applicant's individual qualification be the equivalent of those required by this chapter."

Section 10035 R. S. Missouri, 1939, reads as follows:

"The Board shall admit to examination for license and upon the passing of such examination and the payment of a fee of ten dollars (\$10.00) shall license to practice as an obstetrical nurse any applicant possessing all the requirements of section 10034, except in lieu of the course in a school of nursing, shall have graduated from a school attached to a maternity hospital having a course of training requiring eighteen (18) months for completion. And such persons shall be entitled to append the letters 'O. N.' to his or her name: Provided, that any applicant who is a graduate of a school of obstetrical nursing which gave at the time of applicant's training a course of two school years of not less than an aggregate of eighteen months, and who has heretofore been licensed as an

July 29, 1943

attendant under the law of 1921, and who has paid the fee of ten dollars (\$10.00) as required by said law, shall be granted a license by the board as a registered obstetrical nurse without examination upon the payment of a fee of ten dollars (\$10.00)."

It will be noted from the authorities above cited, that physicians, midwives, nurses and osteopathic physicians, are required to report births. The only case that we have been able to find where this subject has been judicially determined, is the case of State ex rel. Johnson, Attorney-General v. Wagner, et al (Neb. Sup. Ct. 1941), 297 N. W. 906, 1. c. 912, where the court said:

"To obtain a license to practice osteopathy, respondent was required to exhibit a diploma issued by a regular school of osteopathy wherein the curriculum included instruction in certain subjects required by statute, one of which was obstetrics. He was also required to pass an examination in the required subjects. While these facts alone would not authorize respondent to engage in the practice of obstetrics, yet, when considered with the statute regarding the reporting of childbirths, together with the history of its development, we think the legislature authorized respondent, upon securing a license to practice osteopathy to engage in the practice of obstetrics. As was said in *Stoike v. Weseman*, 167 Minn. 266, 208 N. W. 993: 'Unless an osteopathic physician could lawfully attend a woman in childbirth, there would be no reason for requiring him to report the birth of the child.' * * * * *

It is fundamental principle of statutory construction that the legislature must be presumed to have had in mind all previous legislation upon the subject, so that in the construction of a statute we must consider the preexisting law and any other acts relating to the same subject. We

therefore reach the conclusion that the legislature has recognized obstetrics as a branch of osteopathy, a conclusion which the court is obliged to follow until the legislature by specific action evidences a contrary view. We are therefore of the opinion, after an examination of the legislative history of the laws pertaining to osteopathy and their relation to obstetrics and regulatory requirements as to reporting child-births, that the legislature has authorized a licensed practitioner of osteopathy to engage in the practice of obstetrics,
 * * * * *

In the practice of obstetrics, nurses must stay within the limits of the nursing profession and not attempt to perform the duties of a doctor. In the case of Commonwealth v. Porn, 82 N.E. 31, 196 Mass. 326, 17 L.R.A., N.S., 94, 13 Ann. Cas. 569, it was held that when, in addition to ordinary assistance in the normal cases of childbirth, there is the occasional use of obstetrical instruments, and a habit of prescribing for conditions described in printed formulas which the defendant carried, such a course of conduct constitutes a "practice of medicine" in one of its branches. Although childbirth is not a disease, but a normal function of women, yet the "practice of medicine" does not appertain exclusively to disease, and obstetrics as matter of common knowledge has long been treated as a highly important branch of the science.

CONCLUSION

It is the opinion of this department that the individuals who are authorized to practice obstetrics, under the laws of this State, are duly licensed physicians and surgeons, duly licensed midwives, duly licensed osteopathic physicians, and duly licensed nurses.

That statutes do not define the extent to which these individuals may practice obstetrics within their particular provisions. This question appears to be one of fact depending upon the particular profession. For instance, it is

Honorable James Stewart, M. D.

(11)

July 29, 1943

obvious that a nurse may practice obstetrics only as a nurse and not as a physician.

Respectfully submitted

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APPROVED BY:

ROY McKITTRICK
Attorney General

LAP:RW