

Opinion No. 637**Medicine—Physicians—Osteopaths
—Chiropractors.**

HELD: Osteopaths and chiropractors, as such, are not physicians and may not practice medicine or surgery in Montana.

November 1, 1934.

Your letter to us of recent date is in part as follows:

"As you probably know, the State Medical Society recently entered into an agreement with the State Relief Commission to give emergency medical care to people on relief. After the contract was accepted and put into effect we received requests from the chiropractors and the osteopaths that we enter into an agreement with them.

"According to FERA Rules and Regulations No. 7, governing medical care provided in the home to recipients of unemployment relief, quoting from Subdivision B of Section 3 on page 7, when a program 'of medical care in the home for indigent persons has been officially adopted, participation shall be open to all physicians licensed to practice medicine in the State subject to local statutory limitations.'

"Later on, on the same page the following statement is made: 'a similar policy of procedure shall be followed in the preparation of approved lists of nurses, dentists and pharmacists.' No mention is made of chiropractors and osteopaths.

"We would appreciate it if you would advise us, if, under the terms of Montana statutes, osteopaths and chiropractors are licensed to practice medicine in the state subject to local statutory limitations.

"If they are not licensed to practice medicine it would appear that we can not enter into an agreement with them to furnish their professional services to people on relief."

The practice of medicine and surgery is regulated by Sections 3116-3124, Revised Codes 1921. Section 3116 provides that the governor shall appoint a board of medical examiners consisting of seven physicians. Section 3118 provides that any person wishing to practice medicine or surgery in this state shall first secure a certificate from said board. Section 3122 provides that every person practicing medicine or surgery without such certificate shall be guilty of a misdemeanor and punished by fine or imprisonment, or both. The same section defines "practicing medicine or surgery."

The practice of osteopathy is regulated by Sections 3125-3137, Revised Codes 1921. A state board of osteopathic examiners is created and its duties defined. Every person who practices osteopathy in this state is required to secure from such board a license authorizing him to do so. Section 3130 provides that such license "shall not authorize the holder thereof to prescribe or use drugs in the practice of osteopathy, or to perform major or operative surgery." Section 3127, as amended by Chapter 79, Laws of 1925, makes it unlawful for any person to practice osteopathy in this state without a license from said board. Section 3132 prescribes the penalty for a violation of the statute. Section 3136 defines the practice of osteopathy, and Section 3137 declares that "the system, method or science of treating diseases of the human body, commonly known as osteopathy, is hereby declared not the practice of medicine or surgery within the meaning of Sections 3116 to 3124 of this code and is not subject to the provisions of said sections."

The practice of chiropractic is regulated by Sections 3138-3154, Revised Codes 1921. Section 3138 provides for the creation of a state board of chiro-

practic examiners composed of three practicing chiropractors. Section 3142 provides that any person desiring to practice chiropractic in this state must obtain a license to do so from said board. Section 3153 fixes the penalty for a violation of the act. Section 3144 defines chiropractic, and Section 3146 provides that chiropractors "shall not in any way imply that they are regular physicians or surgeons. They shall not prescribe for or administer to any person any medicine or drugs, nor practice medicine or surgery."

In the case of *State v. Dodd*, 51 Mont. 100, the supreme court considered Sections 3116-3124 and Sections 3125-3137 and concluded that the practice of medicine and surgery does not include the practice of osteopathy, and that the practice of osteopathy does not include the practice of medicine and surgery. (*State v. Wood*, 53 Mont. 566; *State v. Hopkins*, 54 Mont. 52.) With equal confidence it can be asserted, in view of existing statutes dealing with the subjects, that the practice of medicine and surgery does not include the practice of chiropractic, and that the practice of chiropractic does not include the practice of medicine and surgery. Indeed, in the case of *State v. Hopkins*, 54 Mont. 52, decided before Sections 3138 to 3154 were enacted by the people at the general election held on November 5, 1918, the supreme court ruled that the practice of osteopathy included the practice of chiropractic.

In the well considered case of *State v. Sawyer*, 214 Pac. 222, though it is hardly necessary to cite it in view of what has been already said, the supreme court of Idaho considered its statute relating to the practice of medicine and surgery and its statute relating to the practice of osteopathy and ruled that the holder of a license to practice osteopathy is not authorized to practice medicine and surgery, or either of them. (*Ex parte Rust*, 183 Pac. 548.)

It is clear, therefore, that osteopaths and chiropractors, as such, are not physicians and may not practice medicine or surgery in this state.