

Physicians and Surgeons, Certificate. Certificate of Physicians, Practicing Without. Advertisement as Physician, Proof Sufficient to Convict. Dentistry, Practice Of. Optometry, Practice Of.

1. A person who attempts to treat, cure, relieve or alleviate, human ailment, receiving, or with the intent to receive, any form of compensation therefor, without having first obtained a physician's license, is guilty of a violation of Chap. 101, Laws 1907.

2. A person who advertises or publicly professes to treat, cure, relieve or alleviate human ailment, either by way of newspaper advertisement or hand bill, is guilty of a violation of Chap. 101, Laws 1907.

The better rule, however, in cases of this nature, is to submit proof as to all the violations referred to and not rest on one alone.

3. Dentistry and Optometry being provided for in special laws, are not within Chap. 101, Laws 1907. A person practicing either one is subject to the laws of that one alone.

Helena, Montana, Nov. 25, 1907.

Hon. Sharpless Walker,
County Attorney,
Miles City, Montana.

Dear Sir:—

I am in receipt of your letter of the 5th inst. requesting an opinion relative to Chapter 101, Laws 1907. Also your letter of the 13th inst. relative to same matter. Your letter directs three inquiries relative to this law:

1st. Does one come within its purview who is practicing without a certificate, yet does not receive any compensation?

2nd. Would such a person be guilty by proof of an advertisement alone?

3rd. Do dentists and oculists come within the meaning of the act?

In view of your letters and those of the state board of medical examiners relative to the same person you refer to, I take it your questions one and two go to question of proof. Questions of proof in criminal cases should always be disposed with the single proposition secure and submit the best proof obtainable.

The act provides "after having received or with the intent of receiving therefor * * * any gift, bonus or compensation."

Thus your first question is answered by the law itself. The practicing with this intent, provable in many ways, is one of the essential elements of the compensation clause referred to. It is, however, not the one element constituting a violation of this act. The act provides that any such person using "M. D." or "Dr." etc. in connection with his or her name is guilty of a violation thereof (L's 5 to 9 p. 251), or publicly professes to be a physician or to cure. (L's 10 to 17, p. 251). Under the act, doing any one of these is a violation thereof, and under very similar acts to the one in question, single acts such as those enumerated have been held to be a violation thereof.

Advertisement sufficient:

State vs. Yegge (S. D.) 103 N. W. 17-69 L. R. A. 604.

People vs. Phippin, 70 Mich. 6.

Hale vs. State, 58 Ohio 676.

Hand bills, recommendations, etc.

Benham vs. State, 116 Ind. 112.

Use of "Dr." or "M. D."

22 Ency. Law, 786, Note 2.

One fee:

Parks vs. State (Ind.) 64 N. W. 862-59 L. R. A. 190.

The contra has also been held, as to an advertisement being sufficient.

State vs. Dunham (Wash.) 72 Pac. 459.

Therefore, while you might sustain a conviction upon either of the points you raise in questions 1 and 2, it is my judgment, and I so advise, that you do not stand upon the one element alone. Submit the best proof as to all the elements or violations you can get. A single violation of the law is sufficient.

Aulle vs. State, 6 Tex. App. 202.

While it might not be necessary to specify the person or the fee,

State vs. Doran, 109 N. Car. 864.

State vs. Call, 121 N. Car. 643.

Whitlick vs. Comm. 89 Va. 337.

yet do so if possible.

As to your third question do dentists and oculists come within the act, my answer is no.

This act purports in its title to amend Sec. 606 of the Political Code. Section 606 referred to is in Part III, Title 1, Chap. III, Art. XVI. of that code, being the chapter upon medical examiners and medical practice. Thus the act of 1907 is bound in its intent by what it purports to amend and by a construction of the rest of the chapter.

Dentistry and Optometry are provided for by separate and independent acts. Dentistry being Art. XVII of the same title and chapter of the Political Code, and is not inconsistent with the others. Furthermore, passed by the same legislature. Optometry is provided for by Chapter 138, Laws 1907, being the same legislature that passed the act here in question. It cannot be presumed that two acts are in direct

conflict, and to be construed as in conflict so as to defeat the purposes of both. The intent of the legislature is clear that these separate professions of curing ailments are entirely independent and separate from each other. So a person licensed under one law, and practicing under that law, is entitled to practice that which he has received his certificate for, and does not, so long as he practices within what his certificate was granted for, violate either of the other two laws.

Very truly yours,

ALBERT J. GALEN,

Attorney General.