

Opinion No. 151.

**County Physician—County Health
Officer—Osteopaths.**

HELD: An osteopath cannot serve
as county physician.

August 12, 1935.

Mr. Raymond Shelden
County Attorney
Ekalaka, Montana

You have asked us whether or not
in our opinion an osteopath, as such,
is qualified to hold the position of
county physician.

Section 4527, Revised Codes 1921,
as amended by Chapter 55, Laws of
1927, provides: "The board (of county
commissioners) must annually, at
their December meeting, make a con-
tract with some resident practicing
physician to furnish medical atten-
dance to the sick, poor, and infirm of
the county, and to the inmates of the

county jail, and must also make provision for the furnishing of medicine to the same; provided, however, that the board may let such contract for the furnishing of medical attendance to the physician appointed by such board as County Health Officer, and may fix a salary or other rate of compensation to be paid to such County Health Officer for the furnishing of such medical attendance, which salary or other compensation shall be in addition to the salary of such physician as County Health Officer."

Section 2473, Revised Codes 1921, provides: "There is hereby established in each county a board of health which is designated in this act as the 'County Board of Health', which shall consist of the board of county commissioners and one physician legally authorized to practice medicine and surgery in this state, who must be appointed by the board of county commissioners. Said physician when so appointed shall be ex-officio secretary of the county board of health and the county health officer, and shall hold office at the pleasure of the board."

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 examiners consisting of seven learned and skilled physicians. Section 3118 provides that every person who wishes to practice medicine or surgery in this state shall submit to an examination before the board in the prescribed branches and secure a certificate therefrom. The certificate entitles the holder to practice both medicine and surgery. Section 3122 declares what acts shall constitute the practice of medicine or surgery, and provides that any person who practices medicine or surgery without a certificate shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine or imprisonment or both.

The practice of osteopathy is regulated by Sections 3125-3137, Revised Codes 1921. Section 3125 provides that the governor shall appoint a state board of osteopathic examiners consisting of three practicing osteopaths. Section 3129 provides that any person who desires to practice osteo-

pathy in this state shall submit to an examination before the board in the branches designated therein and obtain a license from the board. 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; and any person holding a license who shall prescribe or use drugs in the practice of osteopathy, or who shall perform major or operative surgery, shall be deemed guilty of a misdemeanor." Section 3136 defines the practice of osteopathy, and Section 3137 declares that the system of treating diseases of the human body, commonly known as osteopathy, is not the practice of medicine or surgery within the meaning of Sections 3116-3124, supra.

In view of the plain language of Sections 3118 and 2473, it cannot be doubted that by the expression "resident practicing physician," found in Section 4527 as amended, is meant a person who lives in Montana and practices medicine or surgery therein, or both, and who has received a certificate from the board of medical examiners authorizing him to practice medicine and surgery in the state. Surely Section 4527 does not contemplate a contract with a physician who is practicing his profession contrary to the law. Much less does it contemplate a contract with a person who is not a physician at all. It goes without saying that a county physician, so-called, who is required under his contract "to furnish medical attendance to the sick, poor and infirm of the county and the inmates of the county jail," must at times prescribe drugs for his patients, something the osteopath is prohibited from doing.

In the case of *State v. Dodd*, 51 Mont. 100, the Supreme Court considered Sections 3116-3124 and Sections 3125-3127 and concluded therefrom 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).

The statutes of Idaho relating to the practice of medicine and surgery and the practice of osteopathy are not

unlike our statutes relating to these subjects. In the case of *State v. Sawyer*, 214 Pac. 222, the Supreme Court of Idaho considered its statute dealing with the practice of medicine and surgery and its statute dealing with 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; *State v. McPheeters*, 249 N. W. 349.)

We are, therefore, in accord with the conclusion you reached in this matter and hold that an osteopath cannot serve as county physician.