

February 28, 1935.

Edith L. Brown, R. N.
Secretary, State Board of Examiners
for Nurses
Helena, Montana

You recently requested our opinion upon the state of facts found in the following letter received by you from Margaret Beddor, R. N., of Wolf Point, Montana:

"I would like to be advised if there is any law regarding lay people giving ether anesthesia and hypodermics. We have a great number here in Wolf Point who do; also who deliver babies without a doctor and do the suturing of repairs. It does not seem right if the law does allow it when a registered nurse would not think of such a thing."

The writer doubtless had in mind a possible violation of the law governing the practice of medicine in this state.

Section 3122, Revised Codes 1921, reads thus: "Any person practicing medicine or surgery within this state without first having obtained a certificate to practice, as provided by law, and after his certificate to practice has been revoked, or contrary to the provisions of this article, shall for each violation of the provisions of this code, or any act relating to the practice of medicine or surgery in this state, be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than one thousand dollars nor less than two hundred and fifty dollars, or by imprisonment in the county jail not exceeding one year, nor less than ninety days, or by both said fine and imprisonment, as the court may determine. Any person shall be regarded as practicing within the meaning of this article who shall append or affix the letters M. B. or M. D., or the title of Dr. or Doctor, or any other sign or appellation in a medical sense to his or her name, who shall publicly profess either on his own behalf, in his own name, in his trade name, or on behalf of any other person, corporation, association, partnership, either as manager, bookkeeper, solicitor, or other agent, to cure, treat, relieve, or palliate any ailment, disease, or infirmity of the mind or body of another by using or prescrib-

Opinion No. 53.

**Medicine, Illegal Practice of
—Midwife.**

HELD: 1. A midwife of skill and experience, practicing obstetrics, is not engaged in the illegal practice of medicine.

2. If a midwife of skill and experience is in attendance on a woman in confinement, and no physician is present, and childbirth results in lacerations of the private parts, it would be her duty to suture these lacerations, and in so doing she would be guilty of no violation of the law.

ing any drug, medicine, or surgical treatment, or who shall recommend, prescribe, or direct, for the use of any person, any drug, medicine, appliance, apparatus, or other agency, whether material or not material, for the cure, relief, or palliation of any ailment or disease of the mind or body, or for the cure or relief of any wound, fracture, or bodily injury, or other deformity, after having received, or with the intent of receiving therefor, either directly or indirectly, any bonus, gift, or compensation; provided, however, that nothing in this section shall be construed to restrain or restrict any legally licensed osteopathic practitioner practicing under the laws of this state. Nothing in this act shall prohibit any legally licensed pharmacist or mercantile dealer from selling any drugs or medicines which are now allowed to be sold under the laws of the state of Montana or the United States."

Under this statute, to constitute practice of medicine, it is necessary for a person to do some one of these four things: (1) To affix the letters M. B. or M. D., or the title of Dr. or Doctor, or any other sign or appellation in a medical sense to his or her name; (2) to publicly profess to be a physician or surgeon; (3) to publicly profess either on his own behalf, in his own name or in his trade name, or on behalf of any other person, corporation, association or partnership, either as manager, bookkeeper, solicitor, or other agent, to cure, treat, relieve or palliate any ailment, disease, or infirmity of the mind or body of another by using or prescribing any drug, medicine, or surgical treatment; (4) and to recommend, prescribe, or direct, for the use of any person, any drug, medicine, appliance, apparatus, or other agency, whether material or not material, for the cure, relief, or palliation of any ailment or disease of the mind or body, or for the cure or relief of any wound, fracture, or bodily injury, or other deformity, after having received, or with the intent of receiving therefor, either directly or indirectly, any bonus, gift or compensation. Under the first subdivision the gravamen of the statute is the affixing of a medical appellation to the name. Under the second subdivision the gravamen of the statute is pub-

licly professing to be a physician or surgeon. Under the third subdivision the gravamen of the statute is publicly professing in one's own behalf or in behalf of another to treat the sick or afflicted. Under neither of them is any actual treatment of a patient necessary and therefore the question of compensation is not involved. The fourth subdivision deals with the actual treatment of or prescription for the sick or injured, and provides that such attention, even to only one person, if for present or prospective pay shall constitute the practice of medicine. (*Territory v. Lotspeich*, 94 Pac. 1025.)

Leaving out of consideration for the moment the things required at and immediately preceding delivery, it is apparent, we think, that the other acts complained of, without more, do not constitute a breach of the provisions of section 3122, even though it be conceded that the persons who do those acts are without certificates to practice medicine.

Sections 2530, 2535, 2538 and 3121, Revised Codes 1921, recognize the right of a midwife to follow her avocation. Indeed, the last section expressly excepts midwives of skill and experience from the provisions of the Act (sections 3116-3124, R. C. M. 1921), regulating the practice of medicine. (*State v. Wood*, 53 Mont. 566.) The term "midwife" means a female obstetrician, and the term "midwifery" has been defined as the practice of obstetrics. (*Commonwealth v. Porn*, 196 Mass. 326, 82 N. E. 31, 13 Ann. Cas. 569.)

If, then, a midwife of skill and experience is in attendance on a woman in confinement, and no physician is present, and childbirth results in lacerations of the private parts, we have no hesitation in saying that it would be her duty to suture these lacerations, otherwise there might be danger of serious hemorrhages. In doing so she would be guilty of no violation of the law.