

No. 417

**PHYSICIANS AND SURGEONS—OSTEOPATHS—  
CHIROPRACTORS—INSANITY HEARINGS**

- Held: 1. Neither an osteopath nor a chiropractor is qualified to serve as an examining physician at an insanity hearing conducted under the provisions of Chapter 126, Volume One, Revised Codes of Montana, 1935, as amended in part by Chapter 117, Laws of 1939.
2. Neither an osteopath nor a chiropractor is qualified to make the certificate required by Section 1436, Revised Codes of Montana, 1935.

May 16, 1942.

Mr. Bert W. Kronmiller  
County Attorney  
Big Horn County  
Hardin, Montana

Dear Mr. Kronmiller:

You have asked this office if an osteopath or chiropractor is a person qualified to serve as an examining physician under Chapter 126, Volume

One, Revised Codes of Montana, 1935, which has been amended in part by Chapter 117, Laws of 1939.

Chapter 126, Volume One, Revised Codes of Montana, 1935, as amended by Chapter 117, Laws of 1939, provides for the examination of allegedly insane persons and their commitment to the insane asylum, if found insane.

Section 1433, Revised Codes of Montana, 1935, as amended by Chapter 117, Laws of 1939, provides:

"The judge must also issue subpoenas for at least two graduates of medicine to appear and attend such examination." (Emphasis mine.)

Sections 1434, 1435 and 1436, Revised Codes of Montana, 1935, provides:

"1434. At the examination the persons subpoenaed must appear and answer all questions pertinent to the matter under investigation."

"1435. The physicians must hear such testimony, and must make a personal examination of the alleged insane person." (Emphasis mine.)

"1436. The physicians, after hearing the testimony and making the examination, must, if they believe such person to be dangerously insane, make a certificate, under their hand, showing as near as possible:

1. That such person is so far disordered in his mind as to endanger health, person, or property.
2. The premonitory symptoms, apparent cause or class of insanity, the duration and condition of the disease.
3. The nativity, age, residence, occupation and previous habits of the person.
4. The place from whence the person came, and the length of time he has resided in this state." (Emphasis mine.)

Notice Section 1433, Revised Codes of Montana, 1935, as amended by Chapter 117, Laws of 1939, speaks of the subpoenaing of "at least two graduates of medicine." (Emphasis mine.) Both Sections 1435 and 1436, Revised Codes of Montana, 1935, require that "physicians" hear the testimony, make the examination and prepare the certificate.

The word "physician" is a broad and general word. Webster defines a physician as one who is skilled in physic or the art of healing, a healer or restorer. Under some circumstances, the word is perhaps general enough to include osteopaths (*Hostetler v. Woodworth*, D. C. Mich., 28 Fed (2nd) 1003; *Smith v. Chicago City Railway Company*, 165 Ill. App. 190). It is doubtful if the word would, however, include chiropractors (*Corsten v. State Industrial Commission* (Wisconsin), 240 N. W. 834; *New York Life Insurance Company v. Modzelewski*, 255 N. W. 299, 267 Mich. 293).

In the statutes above quoted, the general word "physicians" is limited by and refers back to the words "graduates of medicine."

"It is a recognized canon of statutory construction that, where general words follow particular and specific words, the former are limited in meaning to things of the same kind as those particularly enumerated."

*Thaanum v. Bynum Irrigation District*, 72 Mont. 221, 226, 232 Pac. 528, 530.

"The specific provision is paramount over the general, and must control."

*City of Bozeman v. Merrell*, 81 Mont. 19, 261 Pac. 876, 879.

The specific provision in Section 1433, as amended, *supra*, then takes precedence over the general provisions of Sections 1435 and 1436, *supra*; and the question becomes: Is an osteopath or chiropractor a "graduate of medicine"?

Neither an osteopath nor chiropractor is required by the laws of Montana to show he is a graduate of medicine prior to securing a license to practice his profession.

Section 3129, Revised Codes of Montana, 1935, which provides for examinations of applicants for licenses in osteopathy, requires such applicant to present evidence of having actually attended "a legally authorized and regularly conducted school of osteopathy." (Emphasis mine.) Further, Section 3137, Revised Codes of Montana, 1935, provides:

"The system, method, or science of treating diseases of the human body, commonly known as osteopathy, is hereby declared not to be the practice of medicine or surgery within the meaning of sections 3116 to 3124, inclusive of this code, and not subject to the provisions of said sections."

Section 3142, Revised Codes of Montana, 1935, which relates to applications to practice chiropractic, requires each applicant to be "a graduate of a chartered school of chiropractic." (Emphasis mine.) The term "chiropractic" is defined in Section 3144; and nothing therein indicates the use of medical knowledge in the science of chiropractic. Section 3146, concerned with the rights and limitations governing the practice of chiropractic, provides chiropractors "shall not in any way imply that they are regular physicians or surgeons." The section also states, "They shall not prescribe for or administer to any person any medicine or drugs, nor practice medicine or surgery, nor osteopathy . . ."

Nowhere in the laws of Montana is it required an osteopath or chiropractor enroll in, attend, or graduate from a school of medicine prior to applying for a license in Montana. Osteopaths and chiropractors are considered by the laws of this state as members of professions separate and distinct from the practice of medicine.

Hence, I concur with you in your opinion: 1. Neither an osteopath nor a chiropractor is qualified to serve as an examining physician at an insanity hearing conducted under the provisions of Chapter 126, Volume One, Revised Codes of Montana, 1935, as amended in part by Chapter 117, Laws of 1939; 2. Neither an osteopath nor a chiropractor is qualified to make the certificate required by Section 1436, Revised Codes of Montana, 1935.

Sincerely yours,

HOWARD M. GULLICKSON  
Attorney General