

LESSONS FROM CALIFORNIA'S EARLY LEGAL HISTORY

Current California Business and Professions Code, section 4926 provides:

"In its concern with the need to eliminate the fundamental causes of illness, not simply remove symptoms, and with the need to treat the whole person, the Legislature intends to establish in this article, a framework for the practice of the art and science of _____ (guess what?)

The purpose of this article is to encourage the more effective utilization of the skills of _____ (guess again) by California citizens desiring a holistic approach to health. . . . there is a necessity that individuals practicing _____ be subject to regulation and control as a primary health care profession." (Emphasis added)

Who did you guess? If you said chiropractic you are dead wrong. The statute relates to acupuncture.

Section 4926 should be compared with California Chiropractic Board Rule 302 which expressly limits our scope of practice to adjustments and those additional services which directly support the adjustment. We are not even entitled to recommend vitamins unless they are given to support the adjustment. I will return to this issue in my next article. First, I will here provide some legal history to demonstrate grounds for expanding this scope of practice for those chiropractors interested in seizing the alternative care market.

WARNING

The major thrust of the theories outlined here has never been presented to the California courts for reasons which are not relevant at this time. I will cover here the law up to 1960.

MEDICAL PRACTICE ACTS 1876-1913

As was typically true throughout the United States in the 19th Century, the practice of medicine was largely unregulated in California until the latter part of the Century (1876 to be exact). The 1876 statute allowed persons to practice medicine who were "certified" by any of the various "Medical Societies". This included a wide range of practitioners, but included three main groups: 1) so-called orthodox medicine (the AMA was founded in 1847) 2) homeopaths, and 3) eclectics. (Those who "mixed" the best from the other fields and emphasized the use of botanical medicines.)

By the early part of the twentieth century the osteopaths, chiropractors and naturopaths were gaining power; at least with the patient population. In 1901 the first California statute was adopted regulating the practice of osteopathy and in 1907 a general statute regulating medical practice was enacted.

The 1907 Act provided for the Governor to appoint a medical board to be composed of 5 MD's, 2 homeopaths, 2 eclectics and 2 osteopaths. Three forms of certificate were allowed: 1) Medicine and

Surgery, 2) Osteopathy, and 3) "Any other system or mode of treating the sick or afflicted" other than allopathy or osteopathy. In order to qualify for the 3rd type of certificate one had to have a diploma from "a legally chartered college of the system or mode of treatment which the applicant claims or intends to follow."

In 1909 the 1907 statute was amended to specifically allow naturopaths to receive certification. In order to qualify for this certification, one had to have attended a named naturopathic college. In 1913, the 1907 statute (including the 1909 amendment) were repealed and a new statute enacted. The new law provided for only two types of certificates (licenses) and authorized the Governor to appoint persons to the "Board" who were licensed under any of the various medical practice acts.

The two types of certificates authorized by the 1913 Act were: 1) Physicians and Surgeons, and 2) Drugless Practitioners. Four extremely important points are to be noted from this Act:

- 1) 4000 hours of education were required for the physician and surgeons license;
- 2) 2000 hours of education were required for the drugless practitioners license;
- 3) Both licenses required testing over the curriculum which was specified in the Act. But, one who initially became licensed as a drugless practitioner could, upon completion of the additional 2000 hours, become licensed as a physician and surgeon. The person seeking such additional license did not have to re-take the examination over the subjects as to which they had been tested for the drugless practitioner certificate; and perhaps most importantly
- 4) The scope of practice of the drugless practitioner was broad and stated as the right:

"(t)o treat diseases, injuries, deformities, or other physical or mental conditions without the use of drugs or what are known as medicinal preparations and without in any manner severing or penetrating any of the tissues of human beings except the severing of the umbilical cord."

One could, at least ostensibly, still get a license under the drugless practitioner statute until the "Drugless Practitioner" portion of the 1913 Act was repealed in 1949. (As to the Medical Board) Why did the Legislature eliminate the separate drugless practitioner law in 1949? This will become apparent below.

1913 TO 1922

Eclectics ("mixers") and naturopaths were able to obtain licenses to practice from the medical "Board", but "straight" chiropractors were not. But, by 1922, the last Eclectic school was on the verge of closure and people following the tenets of this type of practice thereafter sought primarily the N.D. degree, or became chiropractic "mixers". Many of these people were dissatisfied and wanted a separate licensing board.

1922 TO 1959

It is interesting to note that 10,000 persons attended a "Naturopathic Congress" held in Los Angeles in 1924. The 1922 California Initiative Ballot contained a measure to create the Chiropractic Board and a second one to create the Osteopathic Board. The opponents to each ballot measure argued that both

chiropractors and osteopaths were "quacks". The people did, however, vote in favor of the creation of both "Boards".

1923 - MILLSAP CASE:

The Millsap court defined the "materia medica" of naturopathy to "consist of light, air, water, clay, heat, besides rest, diet, herbs, electricity, massage, Swedish movements, suggestive therapeutics, chiropractic, magnetism, physical and mental culture, (etc., etc.,)".

I previously pointed out that many chiropractors during this era held both D.C. and N.D degrees. It also bears pointing out that, as I understand it, all 3 schools which ultimately became part of LACC even utilized both terms:

"College of Chiropractic Physicians and Surgeons: College of Naturopathic Physicians and Surgeons."

"Southern California College of Chiropractic: Southern California College of Naturopathy."

"College of Naturopathic Physicians & Surgeons/SCCC."

1948 - INITIATIVE-BALLOT MEASURE:

To repeat, the 1913 Drugless Practitioner certificate required 2000 hours of education and the Physicians & Surgeons 4000. The Chiropractic Act of 1922 required completion of 2400 hours and the specified curriculum was essentially the same as for the Drugless Practitioner except that 165 more hours in Ob/Gyn. were required for the Drugless Practitioner license and the hours were increased for other parts of the chiropractic curriculum.

In 1948, the California Legislature, with the support of the Chiropractic Board, the CCA, LACC and many other chiropractic organizations, placed on the Ballot a measure to increase the number of hours for a chiropractic license to 4000 AND PROVIDED FOR 680 HOURS OF ELECTIVES. The "Federated Chiropractors of California" and Homer York, D.C. opposed the ballot measure. Their Ballot "Argument Against (the) Amendment" stated, among other things: "Any part of the 17% of four thousand hours or 680 elective study hours could be used to teach medicine, surgery and/or obstetrics. (Emphasis in Ballot pamphlet) There is no provision to prevent the 5000 Chiropractors, now licensed, (without training in such subjects) from practicing in these areas." The proponents did not disagree with this argument and the People voted the Ballot measure into law. The significance of this Ballot measure, especially the provision for electives and the opposition argument, have been ignored by the schools and in all arguments thus far presented to the courts.

The ultimate irony is that about this same time the California chiropractic school abandoned such courses as herbology, phytology, and in the use of "glandulars" and "hormones". (See prior articles) The schools also stopped granting the joint D.C. and N.D. degrees and stopped using the term naturopathy in their names. As argued in prior article, Personally, I think this was primarily due to the advent of "wonder drugs".

1949 - ELIMINATION OF DRUGLESS PRACTITIONER LICENSE CATEGORY:

It appears that the 1948 Amendment to the Chiropractic Act was designed, in part, to enlarge the potential scope of practice for those chiropractors who elected to qualify by taking necessary courses in drugless (alternative) type medicine. This position is further substantiated by the fact that the Legislature eliminated the Drugless Practitioner license category in 1949 on the heels of the amendment to the Chiropractic Act.

1953 - OOSTERVEEN CASE:

In 1953 two persons licensed outside of California as naturopaths sought to practice as naturopaths in California. They basically argued that to deny them the opportunity to practice naturopathy was a denial of Equal Protection of the Law. The appellate court ruled they were not being deprived Equal Protection because if they wished to practice naturopathic methods of healing they could do so by becoming licensed as either a chiropractor or as a physician and surgeon.

The Oosterveen court pointed out that "naturopathy is practiced in California by more than 1,000 persons, almost all of whom are licensed chiropractors who practice chiropractic and who have displayed somewhere within their offices a certificate or degree of 'Doctor of Naturopathy'". This case has never been specifically modified or overruled. However, some group of chiropractors need to elect to become qualified in order to re-assert the rights to practice "naturopathic, etc." methods of healing as delineated by the Oosterveen court and otherwise.

1959 - PEOPLE v. ALLEN:

The Oosterveen case has been largely ignored since the late 50's. However, in 1959, a Mr. Allen was charged with a crime for having sold a naturopathic degree. That is, he was running a degree mill. When charged he argued that he could not be convicted because the degree was meaningless in that since 1949 "naturopaths could not be licensed as such" (referring to the repeal of the "Drugless Practitioner" Act). The appellate court made short shrift of this argument stating:

"As indicated in the the Oosterveen decision, supra, (p. 205) '(t)he use of natural methods of healing is not forbidden by law' and duly licensed practitioners possessing diplomas as naturopaths could continue to display them. Manifestly, therefore, the 1949 legislation did not destroy the significance of the naturopathic degree or diploma."

The "licensed practitioners possessing diplomas as naturopaths" is obviously a reference to, among others, chiropractors. I will look further into the issue as to how to re-capture these rights in my next article.

It should be noted at this time, however, that in order to claim the benefits of the principles announced in Oosterveen, the diploma/degree relied upon would, under California Education Law, have to meet contemporary standards.