

Plaintiff's contention that the findings are not supported by the evidence cannot be sustained. The record discloses substantial evidence to support the findings of the court, and such being the case the action of the trial court may not be disturbed on appeal.

[2, 3] During the trial plaintiff called for the production of defendant's record showing advance reservations for the evening in question. When defendant produced the reservation book, plaintiff objected to its introduction and the objection was sustained. He is not now in a position to complain of the action of the court. His complaint is based upon certain remarks made by the trial judge on the subject. These remarks are not part of the findings and may not be made the basis for a reversal of the judgment.

The judgment is affirmed.

We concur: CRAIL, P. J.; McCOMB, Justice pro tem.



10 Cal.App.2d 213

In re HARTMAN.
Cr. 322.

District Court of Appeal, Fourth District,
California.

Nov. 15, 1935.

1. Habeas corpus ☞92(1)

Sufficiency of evidence to support conviction may not be reviewed on application for habeas corpus.

2. Physicians and surgeons ☞6(3)

Provision of Chiropractic Act authorizing licensed chiropractor to practice chiropractic as taught in chiropractic schools together with necessary mechanical hygienic and sanitary measures incident to care of body held not to include use of hypodermic syringe and needle for injection of antitoxin in treatment of cancer (Gen.Laws 1931, Act 4811, § 7; St. 1933, pp. 758, 1276, §§ 8e, 17).

Proceeding in the matter of the application of E. B. Hartman for a writ of habeas corpus.

Writ discharged, and petitioner remanded.

Ralph W. Eckhardt, of San Bernardino, for petitioner.

Stanley Mussell, Dist. Atty., and James L. King, Deputy Dist. Atty., both of San Bernardino, for respondent.

BARNARD, Presiding Justice.

The petitioner alleges that he was charged, in separate counts of a criminal complaint filed in the justice's court of San Bernardino township, with the unlawful possession of a hypodermic syringe and needle in violation of section 8e of the Poison Act (Deering's Gen. Laws, Act 5994, as amended by St. 1933, p. 758), with a violation of the state Chiropractic Act (Deering's Gen. Laws, Act 4811) by unlawfully applying to himself the term "physician," and with a violation of the Medical Practice Act (Deering's Gen. Laws, Act 4807, § 17, as amended by St. 1933, p. 1276) by practicing medicine without a license; that he was tried upon a written stipulation of facts and found guilty on all three counts; that a fine was imposed on each count with the alternative of a jail sentence; that he appealed to the superior court of San Bernardino county, which court affirmed the judgment and sentence as to each count; and that the sheriff has taken him into custody on account of his refusal to pay any of said fines or any part thereof.

The petition purports to set forth the stipulation of facts referred to. Among other things, it was stipulated that the petitioner was a licensed chiropractor under the Chiropractic Act; that he was not a licensed physician and surgeon under the Medical Practice Act; that he was possessed of the degree of naturopathic doctor (N. D.) issued by a chiropractic college, but that he held no certificate to practice as a naturopathic physician in California; that he knowingly had in his possession a hypodermic syringe and hypodermic needle when he was not a physician, dentist, registered nurse, veterinary, or pharmacist licensed to practice in this state; that said instruments had not been purchased by him through or with an order signed by a licensed physician, dentist, veterinarian, or a person licensed to practice osteopathy; that he knowingly practiced and advertised himself as practicing a system or mode of treating the sick within this state in that he diagnosed and treated the disease of cancer according to the "Koch" method, by injection of a fluid called an "antitoxin" or split-protein; that this method of treating cancer

is taught in chiropractic schools and colleges in this state; that the use of a hypodermic syringe and hypodermic needles is taught in chiropractic schools and colleges in this state in connection with the subjects of bacteriology, obstetrics, and gynecology; that the method of healing and treating the sick known as "naturopathy" is taught in chiropractic schools and colleges in this state, and that the words "naturopathic physician" mean one who has taken the prescribed course and who has the degree of naturopathic doctor or N. D.; that two licensed physicians and surgeons, who are named, would qualify as experts in medicine and surgery and would testify that in their opinion the use of a hypodermic syringe, a hypodermic needle, and antitoxin is a part of the practice of medicine and surgery; and that a named licensed chiropractor would qualify as an expert and testify that in his opinion the use of a hypodermic needle and syringe and an antitoxin is not the practice of chiropractic.

The petitioner relies on section 7 of the Chiropractic Act, which provides that a license to practice chiropractic shall authorize the holder thereof "to practice chiropractic in the state of California as taught in chiropractic schools or colleges; and, also, to use all necessary mechanical, and hygienic and sanitary measures incident to the care of the body, but shall not authorize the practice of medicine, surgery, osteopathy, dentistry, or optometry, nor the use of any drug or medicine now or hereafter included in materia medica." His position is that since the use of a hypodermic syringe and needle, the diagnosing and treatment of cancer by the use of an injection of antitoxin, and the treatment of the sick by naturopathy are all taught in chiropractic schools in California, he was lawfully entitled to possess a hypodermic syringe and needle, to call himself a naturopathic physician, and to diagnose and treat cancer by injecting an antitoxin.

In the second count of the complaint the petitioner was charged with willfully and unlawfully using the term "physician," and unlawfully representing and advertising himself to be a physician. The only point raised by the petitioner with reference to this charge is that the evidence, as stipulated to at the trial, is not sufficient to sustain a conviction thereon. The stipulation of facts as set forth in the petition states that the petitioner had in his possession printed letterheads, a copy of which is stated to be attached thereto and marked Exhibit A, and

that he also had in his possession printed cards which were in a place accessible to the general public, and two of which were attached to the front door of his office where they could be readily seen by any one entering the office, and a copy of which is stated to be attached thereto and marked Exhibit C. Reference is also made to a letter written by the petitioner on one of these letterheads, which is said to be attached thereto and marked Exhibit B. These three exhibits, thus referred to, which were before the trial court and the superior court on appeal, are not included in the stipulation set forth in the petition and are not brought before us in any manner.

[1] The rule is well established that the sufficiency of the evidence may not be reviewed in such a proceeding as this. The petitioner cites two cases in support of his contention that the evidence may be here reviewed, both of which involve charges of contempt of court. Such cases are distinguished and the reasons for certain exceptions to the general rule are pointed out in the case of *In re Cutler*, 1 Cal.App.(2d) 273, 36 P.(2d) 441. A further consideration is that the failure of the petitioner to include all of the evidence in the record here makes it impossible for us to pass upon the sufficiency thereof, as requested by him.

A somewhat similar situation appears with reference to the charges set forth in the other two counts. The first of these relates to the possession of certain hypodermic instruments and the second to the use of these instruments in injecting an antitoxin in the treatment of cancer. It is argued that the petitioner was authorized to possess and make such use of these instruments by the above-quoted portion of section 7 of the Chiropractic Act, since the use of such instruments is taught in chiropractic schools or colleges, and also because it is merely a measure incident to the care of the body.

[2] We think this cannot be held to be merely a measure incident to the care of the body within the meaning of that section, both because that clause of the section refers to general hygienic and sanitary measures, even though mechanical, and not to the treatment of diseases and ailments, and because the section contains the further limitation that the authorization granted shall not extend to the practice of medicine or surgery. If the possession and use of such instruments is authorized by this section, it is only because the license provided for authorizes such methods of treat-

ment as a part of the practice of chiropractic. While the section contains the additional clause "as taught in Chiropractic schools or colleges," the entire section must be taken as a whole and it cannot be taken as authorizing a license to do anything and everything that might be taught in such a school. A short course in surgery or one in law might be given, incidentally, and it would not follow that the section would then authorize a licensed chiropractor to engage in such other professions. It is not sufficient that a particular practice is taught in such a school. Under the terms of the statute it must meet the further test that it is a part of chiropractic, whatever that philosophy or method may be, and, further, that it shall not violate the provision which expressly forbids the practice of medicine. If such a practice is not a part of chiropractic but does constitute the practice of medicine, it is not authorized under this license even though it may be taught in such a school.

It cannot be told, aside from the evidence, whether the method of treatment here in question is or is not a part of the practice of chiropractic. What constitutes chiropractic and what is included in such a practice is not defined in this act and could only be determined by the taking of evidence. As the court said in *Evans v. McGranaghan*, 4 Cal.App.(2d) 202, 41 P.(2d) 937, 938: "The intent of the statute is clear upon its face: That the license shall authorize the holder to practice chiropractic as taught in chiropractic schools or colleges. But the court has no way of determining the scope of chiropractic as taught in such schools and colleges in the absence of evidence on that subject, and hence a resort to such evidence would be proper." Even if we could properly review the evidence in this proceeding, there is no evidence in the record before us which would support a finding that the use of a hypodermic needle or the injection of an antitoxin is a part of chiropractic or included in whatever is covered by that word, and no evidence to the effect that such forms of treatment do not constitute the practice of medicine. On the other hand, the only evidence in the record is to the effect that two physicians, as expert witnesses, would testify that in their opinion these things constitute the practice of medicine and surgery, and that a licensed chiropractor as an expert witness would testify that in his opinion the methods in question would

not constitute a part of the practice of chiropractic.

In so far as appears from anything before us in this proceeding, the petitioner is not entitled to be released from custody.

The writ is discharged, and the petitioner is remanded.

We concur: MARKS, J.; JENNINGS, J.



10 Cal.App.2d 436

GUSTASON v. BOARD OF OSTEOPATHIC EXAMINERS et al.

Civ. 9732.

District Court of Appeal, Second District,
Division 1, California.

Dec. 2, 1935.

Hearing Denied by Supreme Court
Jan. 30, 1936.

1. Physicians and surgeons ⇨2

Statute creating board of osteopathic examiners held not unconstitutional (Gen.Laws 1931, Act 5727).

2. Physicians and surgeons ⇨11(3)

Complaint before board of osteopathic examiners charging osteopathic physician with unprofessional conduct in language of statute is sufficient (St. 1913, p. 732, § 14).

3. Physicians and surgeons ⇨11(3)

Evidence that osteopathic physician had in separate listings in telephone directory advertised as specialist in twenty or more services and diseases, and that he was without special training, post-graduate work, or research experience in such services and diseases, held to justify revocation of license on ground that physician advertised with intention to deceive ignorant persons, and in such manner as was harmful to public morals and safety (St. 1913, p. 732, § 14, subd. 3).

Appeal from Superior Court, Los Angeles County; Isaac Pacht, Judge.

Proceeding by David G. Gustason, petitioner, against the Board of Osteopathic Examiners of the State of California and others, to review the action of the Board in suspending petitioner's license. From a judgment denying the petition for review, petitioner appeals.

Affirmed.