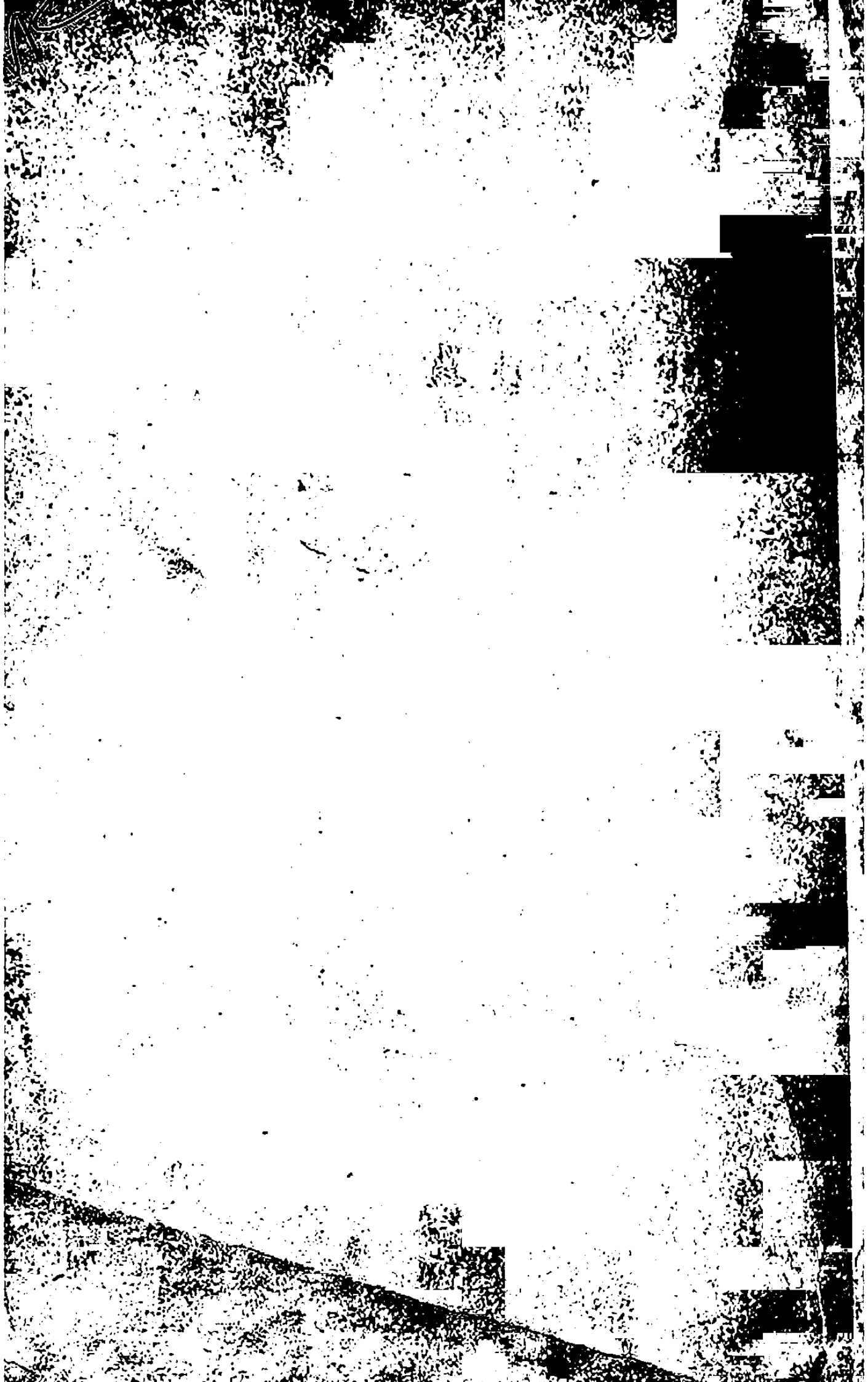
The Legal Aspects of Chiropractic

BRIEF, ARGUMENT AND AUTHORITIES FOR THE AFFIRMATIVE

LOESCH, SCOFIELD & LOESCH
Attorneys for the American Medical Association



A CONSIDERATION OF THE LEGAL ASPECTS OF

CHIROPRACTIC;

AND MORE PARTICULARLY OF THE QUESTION WHETHER OR NOT

CHIROPRACTIC

is included within the terms of the Michigan Medical Act—Act No. 237, Public Laws of 1899, as amended—and is subject to the provisions of that act.

BRIEF, ARGUMENT AND AUTHORITIES
FOR THE AFFIRMATIVE

LOESCH, SCOFIELD & LOESCH
Counsel for
American Medical Association

INTRODUCTION

The purpose of this brief is to show that the method or practice of treatment of disease and physical ailments known as *"Chiropractic"* is within the scope of the act regulating the practice of medicine and surgery in the state of Michigan; and that, consequently, one who uses this system in Michigan without having first complied with the requirements of that act by obtaining a certificate of registration is punishable according to the terms of the act.

Briefly described, *Chiropractic* seems to be a theory or system advanced and developed within the last decade which has for its purpose "the removal of the causes" of disease and injuries by means of manipulation confined to the spinal column. The followers of this school consistently avoid using the phrase "to cure disease." Instead, they speak of "removing the causes" of various acute and chronic ailments by means of "adjustments" of the vertebræ with their hands. They do not give their patients drugs, nor do they use any instruments. They say that all diseases and ailments that mankind suffers have their origin in the spinal column, by reason of the pinching or compression of the nerves by the misplacement or abnormal position of one or more vertebræ. Here they seek the cause of any disease or injury that comes under their care: and having found it, they make the requisite "adjustment," whereupon the cause of the disturbance disappears, and with it its effect, the disease or injury. Its teachers and followers insist that Chiropractic differs widely from Osteopathy; although superficially there might seem to be a strong resemblance. In this assertion the Chiropractors appear to be right, and Chiropractic must be regarded as distinct from Osteopathy.

Numerous schools have sprung up in the United States to teach Chiropractic, and the courses extend over a period of about a year; generally two terms of five months, more or less, with perhaps an intermission of a few months. Diplomas are issued to graduates conferring degrees: usually that of D.C., or "Doctor of Chiropractic."

"Chiropractors," as they are styled, open offices, make calls and hold themselves out as prepared, not to "cure," but "to adjust the causes" of practically all the ills, diseases and injuries that regular

physicians and surgeons treat. Their treatments are, of course, as a rule, not gratuitous, but for reward.

The statute in Michigan which, it is proposed to show in this discussion, applies to this practice or treatment is one that was passed in 1899, and amended in 1903, 1905 and 1907:

> "An act to provide for the examination, regulation, licensing and registration of physicians and surgeons, and for the punishment of offenders against this act, and to repeal," etc.: Act No. 237, Public Acts, 1899, p. 369; Act No. 191, Public Acts, 1903, pp. 270-4; Act No. 207, Public Acts, 1905, p. 305; Act No. 164, Public Acts, 1907, pp. 215-17.

In order to decide the question, it will be necessary to consider another Michigan statute—the Osteopathy Act: "An act to regulate the practice of osteopathy in the State of Michigan, to provide for the examination, licensing and registration of osteopathic practitioners," etc., in effect Sept. 17, 1903—see 135 Mich., 525: Act No. 162, Public Acts, 1903, p. 209. This is an important element of the problem before us; for, as we have said, there are some points of resemblance between Chiropractic and Osteopathy. If Chiropractic is held to be osteopathy, and as such, subject to the act regulating osteopathy, then it can not be subject to the act regulating the practice of medicine and surgery.

Our conclusion is that Chiropractic is not included in the act regulating osteopathy, but that it does fall within the scope of the act regulating the practice of medicine and surgery.

For the purposes of our discussion we will first show what Chiropractic is and what it does, and what the provisions of the two last-mentioned acts are; next, we will endeavor to show that, if there were no Osteopathy Act and no provision in the Medical Act excepting osteopaths from its terms, Chiropractic would be subject to the operation of the Medical Act; thirdly, we will attempt to show that Chiropractic does not come under the Osteopathy Act, nor within the exception in the Medical Act in favor of osteopaths, and therefore is within the scope of the Medical Act.

The point at issue is this:

Is a person who in Michigan uses Chiropractic in treating for reward sick, diseased and ailing persons without having obtained a certificate of registration as required by the Medical Act ("*An act to provide for the examination, regulation, licensing and registration of physicians and surgeons,*" etc., passed in 1899, as it stands to-day with its amendments), guilty of a violation of that act, and liable to the penalties therein prescribed?

STATEMENT OF FACTS

One difficulty that arises in writing this brief is that we have not here a definite record or fixed statement of facts upon which the argument must proceed, as we would have if this were a brief written for a court of appeals after a trial in a lower court. Under the circumstances we must prepare our own statement of facts to be used as a basis for our discussion. In making up this statement we will use an actual instance in which a Chiropractor treated a person for a fee under circumstances which, we believe, made such treatment come within the medical practice act of Michigan. In addition to these facts we shall refer to claims made by several schools of Chiropractic, and to their definition of the system they teach. As we wish to make our argument sufficiently broad to be of assistance in the prosecution of not only one offender against the act, but of any Chiropractor who may be found violating it, we have attempted to avoid basing our discussion upon extreme statements made by only one school of Chiropractic. On the contrary, our effort has been to strike a general average of the divers statements and claims of different schools; so that in the event of a trial of some Chiropractor upon facts not known to us at present, our arguments and conclusions would apply to the evidence brought out on such trial.

The actual instance referred to is this:

In a certain city in Michigan, a Chiropractor treated a woman suffering from a uterine polypus. He gave her Chiropractic treatment consisting of manipulations of her backbone wholly by hand, and charged her a fee. Thereafter the woman went to a "regular" physician or surgeon, who removed the polypus. It seems that, owing to the fact that the patient lived about one hundred miles from a physician or surgeon, she would have been in danger of a severe hemorrhage had she returned to her home after receiving the Chiropractic treatment and without having the polypus removed.

Chiropractic is not defined in either the original *Century Dictionary*, nor in the 1909 Supplement to that work. However, in *Webster's New International Dictionary*, 1910, we find the following definition on page 386:

"*Chiropractic*, n. (*chiro* + Gr. *praktikos*, practical, fr. *prassein*, to do). A system of healing that treats disease by manipulation of the spinal column."

From the *Annual Announcement No. 2 of the Palmer School of Chiropractic, "Chiropractic's Fountain Head," Davenport, Iowa, 1908*, we quote the following passages.

On page 48, there is printed a picture of the trunk of a tree with several branches, and beside it a representation of the spinal column. We quote as follows:

"The left half of this illustration represents the trunk, branches and fruit of a tree. The trunk corresponds to the spinal cord, the branches to the nerves, and the fruit to the organs of the human body, as shown in the right half of the cut. Pliers are represented as pinching a limb, also the nerves which convey the functions to the stomach, the results are immature, worthless fruit and a diseased stomach."

"In the human body the intervertebral foramina are the pinchers. The vertebrae are wrenched, displaced, occluding the openings thru which the nerves pass. *Chiropractors assert that this pressure causes 95 per cent. of all diseases.*"

Page 49:—"The cause of disease has been and is yet mysterious to the great mass of humanity. Chiropractic has solved the mystery; it is now easily understood, the reasoning is logical, the only wonder is that it so long remained unsolved."

Page 50:—"As soon as Dr. Palmer had ascertained that any one or more of the 110 articulations of the spinal column were liable to be displaced, and created diseased conditions, he set about to contrive some way of replacing them."

Page 63:—"The old ideas, that the cause of disease is outside of man, still prevails among most of the schools of healing, and the cure is in finding something, which, by being introduced into the body of the sufferer will *drive* the disease out. But the fact is the cause of disease is within us, and the cure consists in correcting the wrong that is producing it. Chiropractic works upon this principle and meets the demand. It finds the cause in impinged nerves of the patient, and releases that pressure by adjusting the subluxated joint. In doing this there is no rubbing, slapping, knife, drugs, artificial heat, electricity, magnetism, hypnotism, stretching, nor mental treatment, in fact nothing but the adjusting of the displacement. This is not done with any surgical appliances, nor any apparatus whatever, but with the hands. The movements are unique and original in every respect; no other system has anything similar. The work is almost instantaneous; the patient can have one or more subluxations adjusted during the same visit. * * * Chiropractic is the only system of adjusting the cause of the disease."

Page 64:—"* * * we know where to adjust for the primal cause of many diseases that are considered incurable by the medical profession. * * *"

"The Chiropractor does not utilize surgery, in fact denies the necessity for such in all pathological cases. He has no use for dissectional anatomy, but he does need the anatomical knowledge."

Page 65:—"While the student is made familiar with the theories (of physiology) as taught by medical schools, he is also Chiropractically educated. While the functions of the different organs are taught in detail as elsewhere, especial prominence is given to the nervous system, for thru that comes the motive power of all action. * * *"

"Symptomatology. * * * In this, as in other branches, we have our peculiar methods, the symptoms being only used to locate the cause, if in doubt, or to demonstrate that we are right, we trace the affected nerves from the diseased portions to the place where they are injured, and from there out to the ending of those nerves. The ability to cure disease is inherent, it is innate; it cannot be introduced from without. Special attention is given to those outward signs of disease which point with unmistakable certainty to the location of the primary cause."

Page 66:—"The analyzing of the Chiropractor is as different from other schools as is their adjustment from treatment. * * * The Chiropractor learns the history of the case, gets the internal and external symptoms. From these he determines in what region of the skeletal frame a subluxation exists that is impinging the nerves that go to and in the affected part or parts. An examination, where the symptoms indicate, reveals to an observing eye and sensitive trained fingers that a joint is out of alignment, these two articular surfaces have in a measure separated, causing a change in the size and shape of the foramin, or foramina, through which the nerves pass. The medical man names the symptoms and treats the effects; the Chiropractor finds the displaced vertebra, or joint, then replaces it in its former normal position."

"Pathology. * * * Chiropractic Pathology aims to find the cause of diseased conditions in man and then adjust it. * * * Chiropractic pathology finds that the same cause that produced the so-called contagious disease in the first person that ever had it, produces the same in the second and so on. To be able to adjust and correct the cause of the contagious or other forms of disease in one, means to be able to do so in others. Diseased conditions are similar, differing only in degree whether in the soft or hard tissues. Chiropractors find the causes in the body, and not externally."

"Chiropractic Orthopedy does not necessitate the use of mechanical appliances nor operative surgery. Dr. Palmer's

mechanical ingenuity, with an intelligent understanding of the abnormal expressions of Innate Intelligence has made it possible to adjust the human machine so that nature can correct the wrongs."

Page 68:—"Useless Studies.—We do not waste valuable time in observing healthy and morbid tissue under the microscope in order to help our imagination in knowing how they would look if many times as large * * *. P.S.C. students save time and money by omitting these useless studies, for they do not help a Chiropractor in discovering the displacement that causes disease, neither do they assist him in knowing how to adjust it."

Page 69:—"Vertebræ, slightly wrenched out of line, impinge nerves; hence, we replace the subluxated bones; no need of local treatment. Chiropractors' success in these ailments, are as remarkable as the failures under the old idea of palliative remedies.

'Do you use medicine or drugs?' No.

'Do you rub, slap, or use massage?' No.

'Do you hypnotize, or mesmerize your patients?' No.

'Do you use electricity, batteries, or electrical belts?' No.

'Is it necessary to have faith?' No. We adjust children, infants, and the insane.

'Do you give treatments?' No. We adjust, put to right that which is the cause of disease. * * *

'How long will it take me to get well?' Acute cases, usually one adjustment. Chronic cases differ, depending upon the length of time and degree to which they have advanced. * * * We know where to find the cause of your ailments. There would be perfect action if the human mechanism was in proper position. We make it our special business to adjust any part of the skeletal frame that is displaced and pressing upon nerves. We correct the cause of your trouble, then it is only natural that you should be well. If you have any of the following ailments, stop taking drugs. Come to The P.S.C., and let us adjust the cause." Here follows a list of over ninety diseases and ailments, ranging from apoplexy, asthma, abscesses, appendicitis, to consumption, quick or chronic, dropsy, eczema, fevers, all types, hay fever, measles, pneumonia, smallpox and typhoid. Then follows this statement, page 71:—

"If your disease is not on this list, bear in mind that this booklet is not a medical dictionary."

"THIS MEANS YOUR DISEASE. Patients given up by M.D.'s and D.O.'s and other therapeutists, are with few exceptions, given up as 'incurable.' They come to us as a last chance * * * they 'are tired being made a drug store of, or of being stretched or pulled to pieces.' This list of diseases

* * * includes *your* disease, regardless of what names your various doctors have given it. *Chiropractic is the science of adjusting the cause of ALL diseases.*"

Page 72:—"Are you sick? If so, you have subluxations. They ought to be fixed regardless of how long you have been suffering. That cause can be fixed now as well as later on. We know your case will keep until some Chiropractor gets in, but why suffer for a few years more * * *?"

Page 73:—"MY CASE MIGHT BE INCURABLE." "It probably is to the medical man or osteopath. That is why you are still ailing. But is it 'incurable' to the magic adjustments of the Chiropractor? Ask him and see. * * * *He adjusts causes, therefore, gets results.*"

Page 83:—"The physical representative of the causes of all diseases, male or female, is in the spinal column. The Chiropractor analyses your case from that place, gives you adjustments at the backbone and at no time do you expose more than your back to him or her; nor does he do *anything* to any other portion of your back, nor should he apply any liniments, hot fomentations, olive oil or any other form of 'dope' or 'treatment,' to you. The Chiropractor finds it unnecessary to give local examinations in other parts of the body, internal or external. No more knowledge is gained after an examination of that kind than before."

Opposite page 97 is a reproduction of one of the diplomas issued by this school. Omitting the heading, it reads:

"BE IT KNOWN, THAT ..... has completed the course of study, as taught in this 'Chiropractic's Fountain Head' school, and passed the required examinations in Anatomy, Physiology, Pathology, Dissection, Analysis, Hygiene, Chiropractic Orthopedy, Nerve Tracing, Histology, Gynecology, Obstetrics, Theory, Philosophy and practice of Chiropractic; whereof we confer upon ..... the degree of

D. C. DOCTOR OF CHIROPRACTIC * * *"

On the back of this page, we find this statement referring to the above diploma: "It is presented to students who take a full course of nine months and pass the required examinations."

Page 96:—"The P.S.C. has one standard (a two years course of six months each) from which it will not deviate * * *."

Page 108:—"IS CHIROPRACTIC OSTEOPATHY?" Under this heading are printed letters from different schools and associations of Osteopathy, in which the writers assert that Chiropractic is not taught or recognized by them.

Page 110:—"These letters are conclusive evidence that Chiropractic is not known or taught in Osteopathic schools. A Chiropractor is to their conception a 'mechanical manipulator,' thus expressing the crude knowledge that such have of our work. If they brought a case to trial, these men would be the first to swear, under oath, that it was the same, claim this, even tho they admit they know nothing about it. Is not such jealousy and piracy? * * * Why are they now stealing much of the Chiropractors' 'thunder?'"

Page 110:—"AN ENVIABLE RECORD." Under this heading are printed letters from former students of the Palmer School, referring to the difference between Osteopathy and Chiropractic.

On Page 111, we find this letter:—" * * * I am now taking adjustments for several troubles which Osteopathy has failed to relieve. One week's adjustments has made a decided improvement. I am a Kirksville graduate of Osteopathy. Will say that there is no resemblance between Osteopathy and Chiropractic. As to the method of application, either could be practiced without the knowledge of the other. ...., D.O." And again on the same page:—"The Osteopaths do not seem to realize that their prosecutions and persecutions are pushing Chiropractic to the front and will certainly act as a boomerang on Osteopathy and make it a back number. Yours truly, ..., D.O." And on Page 113:—"My first patient was a young man with general rheumatism. I gave him one adjustment, he never returned. * * * I no longer use the Osteopathic table, nor give Osteopathic treatments. My patients submit to adjustments without any of the accessories that I used to give in Osteopathy. I have not given an Osteopathic treatment since my return."

On page 113 is also printed this letter under the heading "A Practicing Osteopath Takes a Short Course":

"Osteopathy gave us the first glimmer of light, and started a revolution in the healing art. But its methods are cumbersome and more or less uncertain. The change from fetichism to a scientific study of the human body and its needs was welcomed by thousands. If we but wished to amuse and impress our patients, then the more movements and apparatus the better. But, if we desire to relieve them of sickness and disease, we will use that method which is more direct and effective; this we find in Chiropractic."

Page 114:—"After taking a two-year course at The A. T. Still School of Osteopathy and a short one at THE PALMER SCHOOL OF CHIROPRACTIC, I feel competent to judge of, and appreciate the difference between the two sciences as taught by their founders. Both use their hands, but in an

entirely different manner. Neither one uses the movements of the other. The etiology of the two are dissimilar. The Chiropractors adjust for many diseases which the Osteopaths do not. They cure acute diseases by one or two adjustments. They are given in a few seconds, without any previous relaxing of muscles or ligaments. Exostoses and ankyloses are disposed of by different methods. The two sciences are unlike in regard to *the cause of disease and the mode of application.* An Osteopath may *not know anything that is* Chiropractic, and vice versa. They are in no way related to, or similar to each other. * * * ....., D.O."

On pages 121 to 124 is printed a list of "TIMELY DON'TS." On page 122 is this:

"Don't you realize, if sick, there is a cause producing your disease? Chiropractic can adjust it." * * *

"Don't think Chiropractic is Osteopathy because you are told so. D.O.'s studying Chiropractic know better."

And on page 123:

"Don't think Chiropractors cure disease. They adjust causes. Innate Intelligence does the rest." * * *

"Don't tell us you know 'massage,' therefore you know Chiropractic. This shows you know *nothing* of Chiropractic."

From the *Annual Announcement, 1910-1911, of the Michigan College of Chiropractic, Incorporated, Grand Rapids, Michigan,* we select the following passages:

Page 6:—"The word Chiropractic (Kiropractic) is a combination of two Greek words, meaning to do by hand. A Chiropractic, therefore, is one who by hand manipulation, in releasing the pressure on one or more of the thirty-one pairs of great trunk nerves in the vertebral column, removes the cause of all so-called diseases or affections."

"Correct analysis of the human anatomy reveals the fact that there is one place only where nerves can be shut off from performing their alloted functions, viz: The backbone or spinal column."

Page 8:—"The spinal column is the only place nerves can be impinged, as soft tissue cannot impinge nerves, and pressure on nerves is the cause of all abnormal conditions of the body or so-called disease or pain, no matter where or in what part of the body it may be."

"If a nerve is impinged and the nerve supply is two-thirds restricted, the organ supplied by that nerve will be functionating one-third only."

"Subluxations are a partial dislocation of vertebræ in the spinal column, and in this manner shut off the nerve supply to the organs affected. A vertebral subluxation, therefore, is

a mechanical interference with the flow of the nerve supply from the brain to the affected organ."

Page 10:—"A Chiropractor, with one dextrous thrust, removes the subluxation, adjusts the vertebra into its natural position, turns on the nerve supply and nature does the curing.

"A true Chiropractor with his trained eye and skilled hands quickly finds the subluxations and knowing the organs or part of the body supplied by the trunk nerve that is impinged, immediately knows where the affections are. He has no use for adjuncts, such as massage, electricity, stretching machines and the like. The whole object is accomplished when the nerves are released and are free to functionate the way nature intended they should. A true Chiropractor in adjusting the vertebræ, uses nothing but his hands. Beware of all others. Chiropractic is purely a mechanical science and has absolutely nothing whatever to do with medicine or prescribing or massage, or manipulation of the muscles; its entire purpose is accomplished when the displaced vertebræ are put into place and when the impinged nerve is released. When this is accomplished the cause of all disease or pain is removed.

"There is no guess work." * * *

"The vital problems of life are as definite as those of mathematics and are subject to the same accuracy in solving. Simply a matter of allowing nature a chance to send her life currents to the parts supplied by the different nerves."

"All Cancers, Tumors, Asthma, Appendicitis, Deafness, Catarrh, Fevers, Neuralgia, Rheumatism, etc., are expressions of the nerves, and no matter what part of the body is affected they have one common cause, namely—impinged nerves. The affections entirely disappear when the pressure is removed."

Page 12:—"In the light of what has already been explained, the intelligent mind will be able to deduce the two most basic facts of Chiropractic:

"First.—That the physical cause of all so-called diseases are vertebral subluxation and nerve impingement.

"Second.—That the Chiropractor with his trained and intelligent hands only, by adjusting the vertebræ that are subluxated, will remove the cause.

"Chiropractic Not Osteopathy

"One of the most frequent questions that a Chiropractor is called upon to answer is this: What is the difference between Chiropractic and Osteopathy. The difference is as great as the difference between the poles. Chiropractic does not treat effects. Chiropractors do not manipulate the muscles in any way. They adjust subluxated vertebræ into proper alignment and it takes but a fraction of a second to do it. The whole object is accomplished when the nerve force is turned on. The

Osteopath will spend one-half hour to two hours in treating their patients and then only relaxing the muscles. There is as much difference between Osteopathy and Chiropractic as there is between Chiropractic and the practice of medicine. The Chiropractor confines his work to the Spinal Column only as that is the only place the nerve can be impinged or where affections can exist." * * *

"Is there anything in your science like Christian Science, Faith Cure, Mind Cure, Metaphysics, Suggestive Therapeutics, Mental Science, Osteopathy? No.

"Do you cure disease? No. I remove the cause and nature does the healing. I remove the dams or obstructions that are restricting the life current."

Page 15:—"On completing a satisfactory course of study, the student is presented with a diploma that confers the degree of 'Doctor of Chiropractic' (D.C.) with all the privileges and honors belonging thereto."

From a booklet whose front page reads "CHIROPRACTIC: *a new method of ascertaining and adjusting the physical cause of disease; no drugs; no knife; W. J. Robbins, D. C., Sault Ste. Marie, Michigan.*" with a picture of Robbins, we select the following statements and definitions:

Page 2:—"Its (Chiropractic's) growth remained practically dormant till 1903, since which time B. J. Palmer, D.C., Ph. C., has developed it into a well defined non-therapeutical philosophy, science and art that has no resemblance to any therapeutical method." * * *

"Diseases are caused by a lack of current of Innate Mental impulses. This is produced by a constricting force placed around nerves by vertebral displacements brought about by muscular contraction or concussion of forces." * * *

"A New Science—The Curative Powers Are Within The Body Itself

"The Chiropractic method is a new science of adjusting the cause of disease *without drugs,* based on a correct knowledge of anatomy, and especially the nervous system. With this knowledge of the cause of disease, and our unique method of adjusting the cause, we have learned beyond question, that the curative powers are within the body itself, and that the cure of disease depends wholly upon the body—upon the Chiropractic method of bringing the functional organism into harmony, allowing the Innate mental impulses to flow unobstructed to all parts of the body."

Page 3:—"Every individual has an Innate (born with) and an Educated Intelligence. The Innate Intelligence is that inherent force or energy which controls and cares for the body

from birth till death and is usually called nature, instinct, etc. It is this energy which controls every action and function including the circulation, respiration, secretory, excretory, and assimilation." * * *

"The spinal column consists of 33 bony segments, called vertebræ. The spinal cord, which is an elongation of the brain, passes in and through the spinal column; Nerve fibres are given off on each side of the column and emerge through small openings between these vertebræ, from which they proceed to their parts and organs; each one of these nerves is designed to supply a certain organ with energy. A slight displacement of the bones may decrease the size of the openings through which the nerves pass and shut off a portion of the mental impulses, and the result will be disease-deranged functional activity. The small openings between the vertebræ is the only place where the flow of mental impulses can be interfered with.

"Should an impingement cause pressure on the nerve that controls the kidneys, liver, or, in fact, any organ, then we will have a diseased condition of this particular part, and as soon as we adjust the subluxation, the cause is removed, therefore the disease can no longer exist.

"We have an exact and scientific method of determining the vertebræ responsible for pressure on a nerve. Our manner of correcting this abnormal condition with the hands is unique and original in every respect, and has no similarity to any other method.

"No drugs, knife, massaging, rubbing, electricity, stretching nor mental treatment; we use no appliances nor apparatuses; we simply adjust the displacement, which is done almost instantaneously and without inconvenience to the patient."

In this pamphlet is also printed an alphabetical list of ailments of which, the writer states, Chiropractic can adjust the cause. The list comprises nearly one hundred diseases including Asthma, Blindness, Appendicitis, Brain Fever, Cancer, Consumption, Measles, Smallpox and Typhoid; and under the list is a statement that "This list is only a small portion of the diseases we adjust for. * * * Don't be discouraged if your disease is not listed here, for our space is limited."

A similar list is printed in a pamphlet called *"Chiropractic Facts; Eighth Edition; Away with drugs and knife; Chiropractic adjustment makes it possible for Nature to cure all disease; Dr. S. M. Langworthy, Cedar Rapids, Iowa."* From this pamphlet we also quote the following:

Page 2:—"Cure of *all diseases* follows Chiropractic adjustment, but it might be well to mention here a number of diseases, in the treatment of which medical doctors *rarely meet*

with success, whereas good results after our adjustment *seldom fail*." * * *

Page 7:—"I receive hundreds of letters asking if we treat this, that and the other disease.

"You will not need to ask such questions of you will remember that Chiropractic adjustment is applicable to all diseased conditions."

"WHY CHIROPRACTIC IS NOT OSTEOPATHY

Page 12:—"Chiropractic is not Osteopathy. Chiropractic is a system of finding and removing the actual cause of disease, whereas Osteopathy, regardless of its claims to the contrary, is a system which is applied to the treatment of symptoms nine times where it is once applied to the actual removal of the cause." * * *

"Rubbing, pulling muscles, pressing and kneading over the abdomen and along the sides of the spine and neck, twisting, arm swinging, 'leg pulling' constitute the manipulations used in an Osteopathic treatment. To be sure, Osteopaths talk a great deal about subluxated vertebræ, but it is safe to say that in their spinal examinations they find only a small percentage of the subluxations which really exist, and are unable in the majority of cases to reduce the few luxations they do find, as their method is both uncertain and indirect."

Page 13:—" * * * there is absolutely no resemblance between a Chiropractic adjustment and Osteopathic treatment.

"I have had a great many patients who have been treated by Osteopathy. As soon as the first adjustment is given they invariably say, 'Well, any one could tell that was not Osteopathy.' They require no explanations whatever, and when, in a short time, they see the disease yielding to Chiropractic adjustments which the Osteopath had failed to reach, they are not only satisfied there is a difference between the two systems, but they are convinced that Chiropractic is as superior to Osteopathy as Osteopathy is superior to ordinary massage."

Page 15:—"*Just think of it!* The most vital nerves in all the body are compelled to pass through openings which may be made so small as to *actually pinch* them and so interfere with their normal action as to cause disease in the parts or organs to which they lead.

"Stomach troubles, bowel troubles, headaches, neuralgias, heart troubles, blood troubles, paralysis, rheumatism, etc., each has as its cause an enlarged or constricted condition of the openings or spinal windows through which the nerves pass that control the blood supply and vital action of the cells of the organ or organs which are suffering with disease."

Finally, we quote these statements from *The American Monthly Chiropractor, Vol. 1, No. 1, June, 1908, Oklahoma City, Oklahoma.*

Page 5:—"When we speak of the science of Chiropractic, we mean the art of adjusting subluxations of vertebræ with the hands. The first discovery in this line with which we are familiar, was made by accident. A crude adjustment of a vertebræ restored excellent hearing to a man who was suffering with deafness. From this beginning it has been found that sight, as well as hearing, and 90 per cent. of all diseases can be restored to health by spinal adjustment." * * *

"One of the basic principles of this science is that nerves are responsible for all vital phenomena. They control all function and form and maintain organic structure. It is through sensory nerves we feel; it is through motor nerves we move. Nerves control all the processes of metabolism. Trophic nerves control nutrition. Thermic, or calorific centers regulate the temperature of the body. If nerves are free from impingement, and are intact, the organic structure and functions of all parts of the body will be normal. Nerves may have their function interfered with in different ways." * * *

"It is a discovered fact known to all Chiropractors that nerves become impinged from different causes, and it is pressure on nerves that is the cause of most all nerve trouble, and the consequent derangement of function, or organic structure, which is disease. It is impingement of nerves, and disease derived from impingement that the Chiropractor relieves. We have learned by experience that the removal of impingement of nerves is an easy matter of accomplishment by a Chiropractor who is skilled in adjusting subluxations of vertebræ."

On pages 13 to 19 are printed histories of what students of the Palmer-Gregory College have accomplished in the use of Chiropractic. On page 13 we find this:

"Case of deafness of 13 years standing. Absolutely and permanently relieved by four adjustments." * * *

"Severe case of Asthma relieved by one adjustment." * * *

"Case of chronic dilatation of the eye. Little girl, almost blind, in spite of the assistance of strong glasses. After five adjustments eyes regained normal condition, and glasses were discarded."

On page 14:—"Acute pleurisy. Relieved by one adjustment.

"Tonsillitis with ulceration of the tonsils. All symptoms disappeared after three adjustments; recovery complete."

On page 15:—"Case of Consumption, abscess of the lungs. After two week's adjusting had progressed so that he has decided to join the class."

On page 19:—"Patient exposed to mumps. Inflammation of parotid gland set in and jaw began to swell. This case was aborted by one adjustment and complete relief given."

On page 26:—"Chiropractors do not need to study medicine, nor understand chemistry; for they do not use either; nor do

they need an extended knowledge of anatomy, as they are not surgeons. * * * A knowledge of diseased conditions, of nerves and their distribution, and of spinal adjustments, are principally what a Chiropractor needs to know to accomplish ten times as much as any person with pill bags."

Pages 27-28:—"Acute diseases, such as pneumonia, typhoid, measles, small-pox, mumps, lumbago, sciatica, whooping cough, inflammatory rheumatism, croup and diphtheria are relieved, made well—returned to normal health in one to three adjustments. In chronic cases, those standing for months or years, the vertebræ have become irregular in shape corresponding to the position they occupy. These displaced bones, not only have to be returned to their former position, but also to their normal shape, this may take weeks or months."

Page 31:—"D.C. (Doctor of Chiropractic)—An abbreviation used to designate one who has received that degree and is qualified to practice the science and art of adjusting."

STATUTES TO BE CONSTRUED IN THE DETERMINATION OF THE QUESTION DISCUSSED IN THIS BRIEF

1. The Michigan Medical Act

This is Act No. 237, Public Laws of 1899, as amended by Act No. 191, Public Laws of 1903, Act. No. 207, Public Laws of 1905, and Act No. 164, Public Laws of 1907. The title of the act is, "An Act to Provide for the Examination, Regulation, Licensing and Registration of Physicians and Surgeons, and for the Punishment of Offenders Against this Act, and to Repeal Acts and Parts of Acts in Conflict Therewith."

Sections 1 and 2 provide for the appointment by the Governor of a Board of Registration in Medicine, consisting of ten resident electors, and for the time, place, etc., of their meetings. Section 1, as it now stands, is taken from Act No. 191, Public Laws of 1903.

> "Sec. 3. (This is as amended by Act No. 164, Public Laws of 1907.) On and after the date of the passage of this act, all men and women who wish to begin the practice of medicine and surgery in any of its branches in this state, shall make application to the State Board of Registration in Medicine, to be registered and for a certificate of registration. This registration and certificate shall be granted to such applicants as shall give satisfactory proofs of being twenty-one years of age and of good moral character, but only upon compliance with at least one of the following conditions contained in subdivisions one, two and three of this section.
>
> "First. The applicant shall be registered and given a certificate of registration if he shall satisfactorily pass an examination under the immediate authority and direction of the board upon the following subjects: Anatomy, physiology, chemistry, pathology, materia-medica and therapeutics, toxicology, histology, practice of medicine, surgery, obstetrics, gynecology, mental and nervous diseases, diseases of the eye, ear, nose and throat, bacteriology, hygiene, public health laws of Michigan and medical jurisprudence; said examination to be conducted as follows: * * *
>
> "c. The questions on all subjects, except in materia-medica and therapeutics and practice of medicine, shall be such as may be answered alike by all schools of medicine;
>
> "d. The applicant shall, if possible, be examined in materia medica and therapeutics and practice of medicine by those

members of the board or by a qualified examiner appointed by the board, belonging to the same school as the applicant, and no applicant shall be rejected because of his adherence to any particular system of practice: * * *.

"Second. The applicant shall be registered and given a certificate of registration if he shall present a certified copy or certificate of registration or license which has been issued to said applicant in any foreign nation where the requirements of registration shall be deemed by said Board of Registration in Medicine to be equivalent to those of this act. Provided, Such country shall accord a like privilege to holders of certicates from this board. The fee for registration from applicants of this class shall be fifty dollars.

"Third. The applicant shall be registered and given a certificate of registration if he shall present a certified copy of certificate of registration or license which has been issued to said applicant within the states, territories, districts or provinces of the United States where the requirements for registration shall be deemed by the Board of Registration in Medicine to be equivalent to those of this act, and shall otherwise conform to the rules and regulations agreed upon between the State Board of which he is a licentiate and said Board relative to the recognition and exchange of certificates between states. The fee for registration from applicants of this class shall be fifty dollars: * * *

"Sec. 4. The person receiving a certificate of registration shall file the same, or a certified copy thereof, with the county clerk in the county where he resides. * * *.

"Sec. 7. (This is as amended by Act No. 207, Public Laws of 1905.) Any person who shall practice medicine or surgery in this state, who is not the lawful possessor of a certificate of registration issued under and pursuant to act number two hundred thirty-seven of the public acts of eighteen hundred ninety-nine, or the acts amendatory thereof, or without first complying with the provisions of this act, except as heretofore provided in section three of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than two hundred dollars, or by imprisonment in the county jail for a period of not more than six months, or by such fine and imprisonment, for each offense. It shall be the duty of the prosecuting attorney of the counties of this State to prosecute violations of the provisions of this act.

"Sec. 8. This act shall not apply to the commissioned surgeons of the United States army, navy or marine hospital service, in actual performance of their official duties, nor to regularly licensed physicians or surgeons from out of this State, in actual consultation with physicians of this State, nor

to dentists in the legitimate practice of their profession, nor to temporary assistants in cases of emergency, nor to the domestic administration of family medicines, nor any legally qualified osteopath engaged in the practice of osteopathy, under the provisions of act number seventy-eight of the public acts of the State of Michigan of eighteen hundred ninety-seven, regulating and licensing the practice of osteopathy in the State of Michigan.

"Sec. 9. When any person shall append the letters M.B. or M.D. or prefix the title "Dr." or Doctor or any other sign or appellation in a medical sense to his name, it shall be prima facie evidence of practicing medicine and surgery within the meaning of this act."

2. The Michigan Osteopathic Act

This is Act No. 162, Public Laws of 1903. The title of the act is "An Act to Regulate the practice of Osteopathy in the State of Michigan, to provide for the examination, licensing and registration of osteopathic practitioners, to appoint a State Board of Osteopathic Registration and Examination and for the punishment of offenders against this act and to repeal acts and parts of acts in conflict therewith."

Section 1. Provides for a State Board of Osteopathic Registration and Examination, consisting of five persons to be appointed by the Governor, and for the organization, meetings, records, etc., thereof.

"Section 2. Any person before engaging in the practice of osteopathy in this state, shall, upon the payment of a fee of twenty-five dollars, make application for a certificate to practice osteopathy to the Board of Osteopathic Registration and Examination, on a form prescribed by the Board, giving, first, his name, age—which shall not be less than twenty-one years —and residence; second, evidence that such applicant shall have, previous to the beginning of his course in osteopathy, a diploma from a high school, academy, college or university, approved by aforesaid board; third, the date of his diploma and evidence that such diploma was granted on personal attendance and completion of a course of study of not less than three years of nine months each, and such other information as the board may require; fourth, the name of the school or college of osteopathy from which he was graduated, and which shall have been in good repute as such at the time of the issuing of his diploma, as determined by the board. The board may, in its discretion, accept as the equivalent of any part of all of the second and third requirements, evidence of five or more years' reputable practice of osteopathy, by an osteopathic practitioner located in the state at the time of the passage of this act: Provided, Such substitution be specified

in the certificate. If the facts thus set forth, and to which the applicant shall be required to make affidavit, shall meet the requirements of the board, as laid down in its rules, then the board shall require the applicant to submit to an examination as to his qualifications for the practice of osteopathy, which shall include the subjects of anatomy, physiology, physiological chemistry, toxicology, pathology, bacteriology, histology, neurology, physical diagnosis, obstetrics, gynecology, minor surgery, hygiene, medical jurisprudence, principles and practice of osteopathy, and such other subjects as the board may require. If such an examination be passed in a manner satisfactory to the board, then the board shall issue its certificate granting him the right to practice osteopathy in the state of Michigan. Any person failing to pass such examination may be re-examined at any regular meeting of the board within a year from the time of such failure, without additional fee. Any person engaged in the practice of osteopathy in this state at the time of passage of this act, who holds a diploma from a regular college of osteopathy as determined by the board, and who makes application to the State Board of Osteopathic Registration and Examination before January first, nineteen hundred four, upon the payment of a fee of five dollars, shall receive a certificate from the board without examination, which, when filed with the county clerk in the county where he resides, shall authorize the holder thereof to practice osteopathy in the state of Michigan, but shall not permit him to practice medicine within the meaning of act number two hundred thirty-seven of the public acts of eighteen hundred ninety-nine or acts amendatory thereto: Provided further, That the board may, in its discretion, dispense with an examination of the case, first, of an osteopathic practitioner duly authorized to practice osteopathy in any other state or territory, or the District of Columbia, who presents a certificate or license issued after an examination by the legally constituted board of such state, territory or District of Columbia, accorded only to applicants of equal grade with those required in Michigan, or second, an osteopathic practitioner who has been in the actual practice of osteopathy for five years, who is a graduate of a reputable school of osteopathy, who may desire to change his residence to Michigan, and who makes application on a form to be prescribed by the board, accompanied by a fee of twenty-five dollars.

"The Board of Osteopathic Registration and Examination shall refuse to issue a certificate of registration provided for in this section to any person guilty of grossly unprofessional and dishonest conduct."

Section 3 provides for fees and for salaries of board members and officers.

"Section 4. The certificate provided for in section two of this act shall entitle the holder thereof to practice osteopathy in the state of Michigan, but it shall not authorize him to practice medicine and surgery within the meaning of act number two hundred thirty-seven of the public acts of eighteen hundred ninety-nine or acts amendatory thereto: Provided, That nothing in this act shall be so construed as to prohibit any legalized osteopath in this state from practicing medicine and surgery after having passed a satisfactory examination before the State Board of Medical Examiners in the State of Michigan. Osteopathic practitioners shall observe and be subject to the state and municipal regulations relating to the control of contagious diseases, the reporting and certifying of births and deaths, and may have the right to certify to births and deaths.

"Section 5. Every person holding a certificate from the State Board of Osteopathic Registration and Examination shall have it recorded in the office of the county clerk. * * *

"Section 6. Any person who shall practice or attempt to practice, or use the science or system of osteopathy in treating diseases of the human body, or any person who shall buy, sell or fraudulently obtain any diploma, license, record, or registration to practice osteopathy, or who shall aid or abet in such selling or fraudulent obtaining; or who shall practice osteopathy under cover of any diploma, license, record, or registration to practice osteopathy, illegally obtained, or signed or issued unlawfully or under fraudulent representations; or who after conviction of felony shall practice osteopathy, or who shall use any of the forms of letters, 'Osteopath,' 'Osteopathist,' 'Osteopathy,' 'Osteopathic Practitioner,' Doctor of Osteopathy,' 'Diplomate in Osteopathy,' 'D.O.' or any other titles or letters either alone or with qualifying words or phrases, under such circumstances as to induce the belief that the person who uses such terms is engaged in the practice of osteopathy, without having complied with the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than fifty dollars, nor more than five hundred dollars, or be imprisoned in the county jail not less than thirty days nor more than one year, or both: Provided, That nothing in this act shall be construed as prohibiting any lawfully qualified osteopathic practitioner in any other state or county meeting a registered osteopathic practitioner in this state for consultation; or any osteopathic practitioner residing on the border of a neighboring state, and duly authorized under the laws thereof to practice, whose practice may extend into this state, and who does not open an office or appoint a place of meeting or receive calls in this state; or any osteopathic practitioner duly registered in one

county, called to attend isolated cases in another county. It shall be the duty of the prosecuting attorneys of the counties of this state to prosecute violations of the provisions of this act.

"Section 7. This system, method or science of treating diseases of the human body known as osteopathy is hereby declared not to be the practice of medicine or surgery within the meaning of act number two hundred thirty-seven of the public acts of eighteen hundred ninety-nine of the state of Michigan and not subject to the provisions of said act; Provided, That this act shall not apply to any legally qualified medical practitioner practicing medicine and surgery, under act number two hundred thirty-seven of the public acts of eighteen hundred ninety-nine or acts amendatory thereto, nor shall this act apply to masseurs or nurses practicing massage or manual Swedish movements in this state.

"Section 8. All acts or parts of acts in conflict with this act are hereby repealed."

3. There are other statutes in Michigan regulating different branches of what might be included under the general heading, "Practice of Medicine and Surgery," such as those regulating the practice of optometry and dentistry. But with these we are not concerned; or, at most, only in a remote degree.

As the question under consideration is whether or not persons who use the system known as *Chiropractic* in treating persons for the purposes of preventing, curing or alleviating disease, injuries, or other physical ailments, and who have failed to obtain a certificate of registration as provided in the Medical Practice Act (Act No. 237, Public Laws of 1899, as amended) are violating that act, we are chiefly concerned with the construction of that act. The other acts will only be considered so far as they enter into the principal question.

BRIEF AND AUTHORITIES

I.

THE MEDICAL ACT OF MICHIGAN (ACT NO. 237 OF 1899, AS AMENDED). IS CONSTITUTIONAL

People v. *Reetz* (1901), 127 Mich., 87; 86 N. W., 396.
Reetz v. *Michigan* (1903), 188 U. S., 505; 47 L. ed., 563; 23 Sup. Ct. Rep., 390.
People v. *Phippin* (1888), 70 Mich., 6; 37 N. W., 888.
Dent v. *West Virginia* (1889), 129 U. S., 114; 32 L. ed., 623; 9 Sup. Ct. Rep., 231.
Hawker v. *New York* (1898), 170 U. S., 189; 42 L. ed., 1003; 18 Sup. Ct. Rep., 573.
Bragg v. *State* (1902) 134 Ala., 165; 58 L. R. A., 925; 32 S., 767.
Parks v. *State* (1902), 159 Ind., 211; 59 L. R. A., 190; 64 N. E., 862.
State ex. rel. Burroughs v. *Webster* (1898), 150 Ind., 607; 41 L. R. A., 212; 50 N. E., 750.
State v. *Miller* (1910)— Iowa, —; 124 N. W., 167.
State v. *Adkins* (1910), — Iowa, —; 124 N. W., 627.
State v. *Wilhite* (1906) 132 Iowa, 226; 109 N. W., 730; 11 A. & E. Ann. Cas., 180.
State v. *Edmunds* (1904), 127 Iowa, 333; 101 N. W., 431.
State v. *Heath* (1904), 125 Iowa, 585; 101 N. W., 429.
State v. *Bair* (1900), 112 Iowa, 466; 84 N. W., 532; 51 L. R. A., 776.
People, for use, etc. v. *Blue Mountain Joe* (1889), 129 Ill., 370; 21 N. E., 923.
People v. *Gordon* (1902), 194 Ill., 560; 62 N. E., 858.
Scholle v. *State* (1900), 90 Md., 729; 50 L. R. A., 411; 46 Atl., 326.
Gee Wo v. *State* (1893), 36 Neb., 241; 54 N. W., 513.
Little v. *State* (1900), 60 Neb., 749; 51 L. R. A., 717; 84 N. W., 248.
State v. *Buswell* (1894), 40 Neb., 158; 24 L. R. A., 68; 58 N. W., 728.
State v. *Gravett* (1901), 65 Ohio St., 289; 55 L. R. A., 791; 87 A. S. R., 605; 62 N. E., 325.
State v. *Marble* (1905), 72 Ohio St., 21; 70 L. R. A., 835; 73 N. E., 1063.

State v. *Yegge* (1905), 19 S. D., 234; 103 N. W., 17.
Ex parte Collins (1909), 57 Tex. Crim., 2; 121 S. W., 501.

II.

THE OBJECT OF THE STATUTE IS TO PROTECT THE SICK AND AFFLICTED FROM THE PRETENSIONS OF THE IGNORANT AND THE UNSCRUPULOUS

State v *Buswell* (1894), 40 Neb., 158; 24 L. R. A., 68; 58 N. W., 728.
Little v. *State* (1900), 60 Neb., 749; 51 L. R. A., 717; 84 N. W., 248.
Bragg v. *State* (1902) 134 Ala., 165; 58 L. R. A., 925; 32 S., 767.
Brooks v. *State* (1890), 88 Ala., 122; 6 S., 902.
State v. *Miller* (1910), — Iowa, —; 124 N. W., 167.
State v. *Edmunds* (1904), 127 Iowa, 333; 101 N. W., 431.
State v. *Heath* (1904), 125 Iowa, 585; 101 N. W., 429.
State v. *Wilhite* (1906), 132 Iowa, 226; 109 N. W., 730; 11 A. & E. Ann. Cas., 180.
State v. *Bair* (1900), 112 Iowa, 466; 84 N. W., 532; 51 L. R. A., 776.
State v. *Adkins* (1910), — Iowa, —; 124 N. W., 627.
O'Neil v. *State* (1905), 115 Tenn., 427; 3 L. R. A. (N. S.), 762; 90 S. W., 627.
People, for use, etc., v. *Blue Mountain Joe* (1889), 129 Ill., 370; 21 N. E., 923.
Witty v. *State* (1910), — Ind., —; 25 L. R. A., (N. S), 1297; 90 N. E., 627.
Commonwealth v. *Jewelle* (1908), 199 Mass., 558; 85 N. E., 858.
Commonwealth v. *St. Pierre* (1899), 175 Mass., 48; 55 N. E., 482.
Hewitt v. *Charier* (1835), 33 Mass. (16 Pickering), 353.
People v. *Phippin* (1888), 70 Mich., 6, 19; 37 N. W., 888.
State v. *Yegge* (1905), 19 S. D., 234; 103 N. W., 17.
State v. *Pollman* (1908), 51 Wash., 110; 98 Pac., 88.
State v. *Oredson* (1905), 96 Minn., 509; 105 N. W., 188.

III.

IN CONSTRUING THE MEDICAL ACT WE MUST CONSIDER THE PURPOSE OF THE ACT, AND THE MISCHIEF INTENDED TO BE GUARDED AGAINST

1 Kent's Commentaries, 462.
2 Sutherland's Statutes and Statutory Construction (2d. ed. by Lewis), Secs. 370, 374, 376 and 456.
And cases cited under preceding heading (II).

IV.

CHIROPRACTIC IS INCLUDED IN THE MEANING OF THE WORD "PRACTICE OF MEDICINE OR SURGERY" AND "PRACTICE OF MEDICINE AND SURGERY IN ANY OF ITS BRANCHES" AS USED IN THE MICHIGAN MEDICAL ACT

State v. *Miller* (1910), — Iowa —; 124 N. W., 167.
Bragg v. *State* (1902), 134 Ala., 165; 58 L. R. A., 925; 35 S., 767.
People v. *Allcutt* (1907), 102 N. Y., Suppl., 678; 117 App. Div., 546; affirmed by Court of Appeals in 189 N. Y., 517; 81 N. E., 1171.
Commonwealth v. *Jewelle* (1908), 199 Mass., 558; 85 N. E., 858.
Hewitt v. *Charier* (1835), 33 Mass. (16 Pickering), 353.
People v. *Phippin* (1888), 70 Michigan 6; 37 N. W., 888.
State v. *Buswell* (1894), 40 Neb., 158; 24 L. R. A., 68; 58 N. W., 728.
Little v. *State* (1900) 60 Neb., 749; 51 L. R. A., 717; 84 N. W., 248.
Gee Wo v. *State* (1893), 36 Neb., 241; 54 N. W., 513.
O'Neil v. *State* (1905), 115 Tenn., 427; 3 L. R. A. (N. S.), 762; 90 S. W., 627.
Commonwealth v. *St. Pierre* (1899), 175 Mass., 48; 55 N. E., 482.
Bandel v. *Dept. of Health of City of New York* (1908), 193 N. Y., 133; 85 N. E., 1067.
State v. *Heath* (1904), 125 Iowa, 585; 101 N. W., 429.
State v. *Edmunds* (1904), 127 Iowa, 333; 101 N. W., 431.
State v. *Adkins* (1910), — Iowa, —; 124 N. W., 627.
State v. *Wilhite* (1906), 132 Iowa, 226; 109 N. W., 730; 11 A. & E. Ann. Cas., 180.
State v. *Yegge* (1905), 19 S. D., 234; 103 N. W., 17.
Ex parte Collins (1909), 57 Tex. Crim., 2; 121 S. W., 501.
Newman v. *State* (1910), — Texas, —; 124 S. W., 956.
Witty v. *State* (1910), — Ind., —; 25 L. R. A. (N. S.), 1297; 90 N. E., 62.
Parks v. *State* (1902), 159 Ind., 211; 59 L. R. A., 190; 64 N. E., 862.
Eastman v. *People, for use, etc.* (1897), 71 Ill. App., 236.
Jones v. *People, for use, etc.* (1899), 84 Ill. App., 453.
State v. *Gravett* (1901), 65 Ohio St., 289; 55 L. R. A., 791; 87 A. S. R., 605; 62 N. E., 325.
State v. *Marble* (1905), 72 Ohio St., 21; 70 L. R. A., 835; 73 N. E., 1063.

See also the advisory opinions of Moss, C. J. O., Osler, J. A., and Garrow, J. A., *in Re Medical Act* (1906), 8 *Ontario Weekly Reports*, 766, 767, 773, 774.

State v. *Pollman* (1908), 51 Wash., 110; 98 Pac., 88.

State v. *Oredson* (1905), 96 Minn., 509; 105 N. W., 188.

V.

CHIROPRACTIC IS NOT TAKEN OUT OF THE PURVIEW OF THE MICHIGAN MEDICAL ACT BY REASON OF THE MICHIGAN OSTEOPATHIC ACT, NOR BY REASON OF ANY EXCEPTION CONTAINED IN THE MEDICAL ACT

(a) The Osteopathy Act and the exceptions in the Medical Act in favor of osteopathy include only the one system *osteopathy* and no other systems, even though they may have some similarity to osteopathy.

Commonwealth v. *Jewelle* (1908), 199 Mass., 558; 85 N. E., 858.

2 Sutherland's Statutes and Statutory Construction (2d ed. by Lewis), Sec. 352.

ARGUMENT

I.

THE MEDICAL ACT IS CONSTITUTIONAL

From the time when state legislatures first passed statutes like the present one, regulating the practice of medicine and surgery and other professions, and prescribing certain qualifications of age, character and education for applicants for license or authority to practice, courts have frequently been called on to decide whether such statutes conflicted with constitutions, state or national. Persons whom these statutes kept out of the practice of medicine or surgery have raised all the possible objections: that such laws violated the Fourteenth Amendment to the United States Constitution, which declares that no state shall deprive any person of life, liberty and property without due process of law; that they were *ex post facto* laws; that they constituted an improper exercise of the police power of the state; that they conferred special privileges upon certain classes; that they were prohibitive in their effect. The United States Supreme Court and the courts of last resort in the various states have almost without exception upheld the power of the legislature to pass laws of this kind and have called attention in no uncertain terms to the great need of protection of the afflicted from incompetence, ignorance, and quackery, and of the poor from avarice and unscrupulous greed for gain.

In *People* v. *Reetz* (1901), 127 Mich., 87; 86 N. W., 396, the Supreme Court of Michigan said of the same Medical Act we are now considering as it stood in 1901:

> "The first act passed by the legislature of this State to regulate the practice of medicine and surgery is Act. No. 167, Pub. Acts 1883. This was amended by Act No. 268, Pub. Acts 1887. Then followed the act of 1899, covering the entire subject, and providing for a board of examiners. The act of 1899 is not different in principle from the other acts. If the act of 1883 was valid, then the act of 1899 is valid. Notwithstanding the former decision of this court in *People* v. *Phippin*, 70 Mich., 6 (37 N. W., 888), counsel again attack the constitutionality of this legislation. That case settled the question against the contention of the respondent. See, also, *People* v. *Moorman*, 86 Mich., 433 (49 N. W., 263). Counsel

argue that such legislation is an interference with the inalienable right of a citizen when ill to employ anybody he chooses as his physician. This contention is not supported by authority or reason. The practice of medicine affects the public health, and it is clearly within the police power of the State to provide that those dealing with disease shall be amply qualified to do so, so far as human experience and education may qualify them. If this contention be adopted, then the law providing for the admission of attorneys to practice law is unconstitutional and void. This legislation has been almost universally sustained by the courts of other States and the Supreme Court of the United States. Among the cases are the following, which we cite without further comment: *State* v. *Dent*, 25 W. Va., 1, affirmed in *Dent* v. *West Virginia*, 129 U. S., 114 (9 Sup. Ct., 231); *State* v. *Webster*, 150 Ind., 607 (50 N. E., 750), and authorities there cited."

In the same case on appeal, 188 U. S., 505; 47 L. ed., 563; 23 Sup. Ct. Rep., 390, the United States Supreme Court said in an opinion by Mr. Justice Brewer (page 565, 47 L. ed.):

"The power of a state to make reasonable provisions for determining the qualifications of those engaging in the practice of medicine, and punishing those who attempt to engage therein in defiance of such statutory provisions, is not open to question. *Dent* v. *West Virginia*, 129 U. S., 114; 32 L. ed, 623; 9 Sup. Ct. Rep., 231: *Hawker* v. *New York*, 170 U. S. 189; 42 L. ed., 1002; 18 Sup. Ct. Rep., 573, and cases cited in the opinion. *State ex rel. Burroughs* v. *Webster*, 150 Ind., 607; 41 L. R. A., 212; 50 N. E., 750, and cases cited."

People v. *Phippin*, 70 Michigan, 6; 37 N. W., 888, was decided in 1888, and arose under the old Medical Act, Act No. 167, Laws of 1883, entitled "An Act to promote public health." The court, in holding that this act was constitutional, says on page 19:

"There is no good reason why restraints should not be placed upon the practice of medicine as well as the law. The public are more directly interested in this than in the practice of the law; and persons who engage in this profession require a special education to qualify them to practice. A great majority of the public know little of the anatomy of the human system, or of the nature of the ills that human flesh is heir to; and there is no profession, no occupation or calling, where people may more easily or readily be imposed upon by charlatans. It is almost an every-day experience that people afflicted with disease will purchase and swallow all sorts of nostrums because some quack has recommended it.

"Up to the passage of the act in question, the people of this State were wholly unprotected against quackery, except such protection as the common law afforded."

Two of the Justices, however, dissented from the majority opinion on the ground, in part, that the act was unconstitutional.

The grounds for the dissenting Justices' arguments were that the statute was unreasonable and discriminating, in that it made only graduates of medical colleges and physicians who had practiced for five years and were practicing at the time the act took effect qualified to practice medicine and surgery in the state. The dissenting Justices' criticism would not apply to the act which is now (1911) in force in Michigan. On the contrary, the present act is exactly the kind of regulation that they advocate, in giving the right to take an examination to those wishing to practice medicine and surgery in Michigan.

That Mr. Justice Campbell would not have opposed the present Medical Act, but would on the contrary have given it his hearty support, is evident from his remarks on page 32:

> "Our laws have always allowed practitioners to follow their own systems, and where they have given preferences it has been in such a way that all persons could obtain the same rights upon an examination * * * without distinction of previous education in or out of colleges of medicine. If the skill and knowledge existed it was not material where they came from, and experience in a medical college only counted as so much time in apprenticeship. Had such an examination been made indispensable, which it was not, it [the act] would have been free entirely from legal inequalities, and open to all alike."

Mr. Justice Morse expresses the same idea on page 40:

> "I do not deny the right of the Legislature to provide a competent board who shall examine and pass upon the qualifications of all applicants who desire to enter upon the practice of medicine, and to prescribe that only those who shall pass a competent examination shall be entitled to practice in this State; but I deny the right of the Legislature to exact that none but college graduates shall practice law or medicine."

In *Dent* v. *West Virginia* (1889), 129 U. S., 114; 32 L. ed., 623; 9 Sup. Ct. Rep., 231, the Supreme Court of United States had under consideration a statute similar in many respects to the Michigan Medical Act. It was contended that it was unconstitutional in that it conflicted with the clause of the Fourteenth Amendment which declares that no state shall deprive any person of life, liberty or property without due process of law. The statute was declared constitutional. Mr. Justice Field, delivering the opinion of the court, said (pages 625 and 626, 32 L. ed.):

"It is undoubtedly the right of every citizen of the United States to follow any lawful calling, business or profession he may choose, subject only to such restrictions as are imposed upon all persons of like age, sex and condition. * * * But there is no arbitrary deprivation of such right where its exercise is not permitted because of a failure to comply with conditions imposed by the State for the protection of society. The power of the State to provide for the general welfare of its people authorizes it to prescribe all such regulations as in its judgment will secure or tend to secure them against the consequences of ignorance and incapacity as well as of deception and fraud. As one means to this end it has been the practice of different States, from time immemorial, to exact in many pursuits a certain degree of skill and learning upon which the community may confidently rely, their possession being generally ascertained upon an examination of parties by competent persons, or inferred from a certificate to them in the form of a diploma or license from an institution established for instruction on the subjects, scientific and otherwise, with which such pursuits have to deal. The nature and extent of the qualifications required must depend primarily upon the judgment of the State as to their necessity. If they are appropriate to the calling or profession, and attainable by reasonable study or application, no objection to their validity can be raised because of their stringency or difficulty. It is only when they have no relation to such calling or profession, or are unattainable by such reasonable study and application, that they can operate to deprive one of his right to pursue a lawful vocation.

"Few professions require more careful preparation by one who seeks it than that of medicine. It has to deal with all those subtle and mysterious influences upon which health and life depend, and *requires not only a knowledge of the properties of vegetable and mineral substances but of the human body in all its complicated parts, and their relation to each other,* as well as their influence upon the mind. The physician must be able to detect readily the presence of disease, and prescribe appropriate remedies for its removal. Everyone may have occasion to consult him, but comparatively few can judge of the qualifications of learning and skill which he possesses. Reliance must be placed upon the assurance given by his license, issued by an authority competent to judge in that respect, that he possesses the requisite qualifications. Due consideration, therefore, for the protection of society may well induce the State to exclude from practice those who have not such a license, or who are found upon examination not to be fully qualified."

Nearly ten years later, the same tribunal had to decide the constitutionality of certain features of a New York Statute prescribing qualifications for those wishing to practice medicine. In upholding the statute, Mr. Justice Brewer in this case, *Hawker* v. *New York* (1898), 170 U. S., 189; 42 L. ed., 1002; 18 Sup. Ct. Rep., 573, said for the court (page 1004, 42 L. ed.):

> "No precise limits have been placed upon the police power of a state, and yet it is clear that legislation which simply defines the qualifications of one who attempts to practice medicine is a proper exercise of that power. Care for the public health is something confessedly belonging to the domain of that power. The physician is one whose relations to life and health are of the most intimate character. It is fitting, not merely that he should possess a knowledge of diseases and their remedies, but also that he should be one who may safely be trusted to apply those remedies. Character is as important a qualification as knowledge, and if the legislature may properly require a definite course of instructions, or a certain examination as to learning, it may with equal propriety prescribe what evidence of good character shall be furnished. These propositions have been often affirmed."

II.

CHIROPRACTIC IS INCLUDED IN THE MEANING OF THE WORDS "PRACTICE OF MEDICINE OR SURGERY" AND "PRACTICE OF MEDICINE AND SURGERY IN ANY OF ITS BRANCHES" AS USED IN THE MEDICAL ACT

The main question to be decided here is whether Chiropractic, the system and practice described in our statement of facts, is included within the purview of the Michigan Medical Act, and the answer to this question depends on whether it is comprehended by the phrases "the practice of medicine or surgery" and "the practice of medicine and surgery in any of its branches." The application of the statute to any given act or course of dealing in relation to preventing or curing diseases, ailments, or injuries must be measured by the meaning to be given to those words.

A. The Meaning of the Words as Commonly Understood Justifies Such a Construction

At the outset it may be remarked that as to the word "medicine" there is an ambiguity or double-meaning which will certainly result in a fallacy unless it is pointed out and kept in mind. The word "medicine" may mean either of two things: In one sense, it means a substance, or thing which, when taken into the system

in any way or applied externally to the body, has, or is supposed to have, curative properties. But the word has also another well-defined, recognized and generally understood meaning, namely, the practice or science of healing, curing, alleviating or preventing disease, without any connotation of the means by which this is brought about. It is believed that the bare statement of these two definitions will compel the assent of most people as agreeing with their observation of the use of the word.

If, however, objection is raised to the accuracy of this statement, the most natural arbiters to decide the point are those dictionaries of the English language which are generally regarded as standard. In every-day business and conversation they are universally accepted as settling the meaning of words; compiled, as they are, with great care by the most eminent authorities on English, and defining each word with reference to its etymology as well as its usage in the writings of masters of the language and in popular conversation. Frequent revisions tend to correct possible errors and changes of usage; so that they may be accepted as reflecting the meaning of words as popularly understood.

This view is supported by 2 Sutherland's Statutes and Statutory Construction (2nd ed. by Lewis), section 391, page 750, where the following language is quoted with approval by the author from *State* v. *Stevens*, 69 Vermont, 411; 38 Atl., 80:

> "If a word in a statute is of common import the court may understand it without further knowledge, but if the word is not of common use or has a technical meaning the judge may refer to persons who have knowledge on the subject, or consult documents or books of reference containing information thereon. If the terms are words of art and science, their meaning may be found by consulting experts in such art and science. In fact the trial judge may take such means as he deems advisable to inform himself upon the subject and enable him to give in his instructions to the jury the proper construction and definition of the words used in the statute."

On consulting these authorities we find that the word "medicine" has been defined as follows:

> *Webster's New International Dictionry, 1910:—*
>
> "The science and art dealing with the prevention, cure, or alleviation of disease; in a narrower sense, that part of the science and art of restoring and preserving health which is the province of the physician as distinguished from the surgeon and obstetrician."

"Any substance or preparation used in treating diseases; a medicament; a remedial agent; a remedy; physic."

For the etymology of the word, we are referred to that of the word "medical," which is:

"LL. *medicalis*, L. *medicus*, belonging to healing, fr. *mederi*, to heal; cf. Avestan *madha*, medical science, wisdom."

Century Dictionary:—

"A substance used as a remedy for disease; a substance having or supposed to have curative properties; hence figuratively, anything that has a curative or remedial effect."

"The art of preventing, curing, or alleviating diseases and remedying as far as possible the results of violence and accident. *Practical medicine* is divided into medicine in a stricter sense, surgery, and obstetrics. These rest largely on the sciences of anatomy and physiology, normal and pathological pharmacology, and bacteriology, which, having practical relations almost exclusively with medicine, are called the medical sciences and form distinct parts of that art."

Standard Dictionary, 1897:—

"A substance possessing or reputed to possess curative or remedial properties; as, a fever-*medicine;* a *medicine* for a cold. * * *

"The healing art; the science of the preservation of health and of treating disease for the purpose of cure."

Gould's Illustrated Dictionary of Medicine, Biology and Allied Sciences, 1904:—

"The science and art of preserving health, and preventing and curing disease; the 'healing art,' including also the science of obstetrics. In a more restricted sense of the word surgery is excluded. * * * The term is applied also to a particular drug or therapeutic application."

These two meanings, then, of the word "medicine" are recognized. Which of them did the legislature intend to adopt when it said in Section 3 of the Medical Act of 1899 (as amended in 1907), "all men and women who wish to begin the *practice of medicine and surgery in any of its branches* in this state, shall make application," etc.? And again in Section 7 (as amended in 1905), "any person *who shall practice medicine or surgery* in this State, who is not the lawful possessor of a certificate of registration * * * shall be deemed guilty of a misdemeanor." etc.?

It does not seem open to argument that of the two meanings, the legislature had in mind, not "the curative substance," but "the science and art of preventing, curing, or alleviating disease—the healing art." One can speak of *practicing* a *science* or an *art;* to speak of practicing a *substance* is nonsense.

These plain conclusions, then, must follow: that the legislature in using the word "medicine" meant "the healing art"; and that this meaning of the word is not limited to the science of administering drugs. As we have shown, the standard dictionaries of the English language in common use in this country, as well as a leading medical dictionary do not so restrict the meaning of the word. These definitions, we assert, correctly describe or reflect this meaning of the word as popularly understood.

Coming now to the word "surgery," we find it defined thus:

Webster's New International Dictionary, 1910:—

"Art or practice of healing by manual operation; that branch of medical science which treats of mechanical or operative measures for healing diseases, deformities or injuries."

Century Dictionary:—

"The work of a surgeon; surgical care; therapy of a distinctly operative kind, such as cutting-operations, the reduction and putting up of fractures and dislocations, and similar manual forms of treatment. It is not, however, ordinarily used to denote the administration of baths, electricity, enemata, or massage."

For the etymology we are referred to *"Chirurgeon,"* and find that it is derived from the Greek *cheirourgos,* from *cheir,* the hand, and *ergon,* work; substantially the same derivation as the word "Chiropractic."

Standard Dictionary, 1897:—

"The branch of the healing art that relates to external injuries, deformities, and other morbid conditions to be remedied directly by manual operations or instrumental appliances."

Gould's Illustrated Dictionary of Medicine, Biology and Allied Sciences, 1904:—

"Formerly that branch of medicine concerned with manual operations under the direction of the physician. The scope of the word is now widened, and is so bound up with general medicine that a strict and succinct definition is impossible. Instrumental and manual operative work is still the chief idea, and, so far as it is related to diseases commonly or possibly requiring operative procedure, surgery usually includes the treatment of systemic abnormalities. The term, as limited to a special branch of medical science, as obstetric, gynecologic, aural, ophthalmic, etc., is growing into disuse, while, at the same time, the division of these specialties has narrowed the field of work of surgery as now commonly understood. The surgeon has recouped himself by the inclusion in his department of many subjects not strictly requiring operative treatment, such as inflammation, fever, microbiology, syphilis, etc., etc."

We believe that the few courts that have held, in construing similar statutes, that systems like osteopathy, for instance, are not included under "practice of medicine" or "practice of medicine or surgery," have done so because they confused the two meanings of "medicine." They knew that in one sense it meant a science or art, and also that the word in another sense had something to do with drugs. Failing to define these two meanings sharply, they proceeded on the theory that "medicine" meant the science or art of healing by means of drugs. And, likewise, they speak of "surgery" as if it depended wholly on the *knife* and not at all on manual operation. Thus, in *State* v. *McKnight* (1902), 131 N. C., 717; 42 S. E., 580; 59 L. R. A., 187, the Supreme Court of North Carolina says in an opinion in which osteopathy was under consideration: "Certainly a statute requiring examination and license 'before beginning the practice of medicine or surgery' neither regulates nor forbids any mode of treatment which absolutely excludes *medicines* and *surgery* from its pathology." And earlier in its opinion: "The aim of medical science, which is now probably the most progressive of all the professions, is simply to 'assist nature.' Osteopathy proposes to do that by other methods than by the use of *medicines* or the surgeon's *knife*."

Other courts of high authority, however, have recognized the distinction and refused to give the words "practice of medicine" so narrow a construction; and have held that they included various systems of treatments for curing or preventing disease without drugs, such as osteopathy.

In *Bragg* v. *State* (1902), 134 Ala., 165; 58 L. R. A., 925; 35 S., 767, the Alabama Supreme Court had to decide whether the practice of osteopathy was "the practice of medicine in any of its branches or departments." The contention of the defendant was that it was not, because in the practice of osteopathy no drugs or other medicinal substances are adminstered or applied, internally or externally, nor the knife used in the treatment of diseases. The court, however, held that it was included in the meaning of the words of the statute.

In its opinion, the court makes its work unnecessarily difficult, it seems to us, by accepting as true the defendant's assertion that the words as commonly used and popularly understood carried with them the essential idea of the prescribing of remedial substances or drugs. As we have attempted to show, this is not the case. Nevertheless, the Alabama Supreme Court accepts this

assertion, and then goes on to show that at least the technical meaning did not limit the meaning as contended, and that it was the technical meaning that governed in this case. With the exception just noted we believe the reasoning of the court in its opinion is entirely sound; and as the questions there and here are nearly identical, since both Chiropractic and osteopthy are *drugless* systems of healing, we shall quote from the opinion freely. The italics are, as a rule, our own, both in this case and those to follow. On page 928 (58 L. R. A.), the court says:

> "The word 'medicine' (Latin, *medicina*) is derived from *medeor*, to heal. It is defined by the eminent lexicographer of medical words or terms, Gould, to be 'the science and art of preserving health and preventing and curing disease; the 'healing art,' including also the 'science of obstetrics.' By Dunglison, another author of a medical dictionary, to be 'the healing art; physic: a science the object of which is the cure of disease and the preservation of health.' Bigelow, an eminent physician and author of medical works, says: 'Medicine is the art of understanding diseases, and curing or relieving them when possible.' The Universal Cyclopædia, edited by Rossiter Johnson, Ph.D., LL.D., after giving the derivation of the word 'medicine' from the Latin word *medicina*, defines it to be 'the art of a physician or of healing; the art and science of curing diseases.' The Encyclopædia Brittanica, under the title 'Medicine,' subtit. 'Synoptical View of Medicine,' says: 'Medicine, the subject-matter of one of the learned professions, includes, as it now stands, a wide range of scientific knowledge and practical skill. * * * The science of medicine is the theory of diseases and remedies.' Definitions might be quoted from other writers, but these will suffice to show, not only that the word 'medicine' is a technical word, denoting a science or art comprehending, not only therapeutics, but the art of understanding the nature of diseases, the causes that produce them, as well as the art of knowing how to prevent them—hygiene, sanitation, and the like. These definitions are fully supported and their correctness thoroughly established by the history of medicine, and its practice as a science or art. While it is true, as we said above, there have always existed differences among physicians as to the therapeutic agencies that should be employed in the treatment of diseases, yet it has never been supposed that the disciples of any particular school of the healing art were physicians—practitioners of medicine—and those of a different school or sect were not. *They have all been regarded by eminent scholars as engaged in the practice of medicine.*'

The learned judge briefly reviews the history of medicine from its remote beginning to show that at many stages of the practice of medicine, the use of drugs did not constitute the chief feature of the science. Thus he says of Hippocrates, who lived in the fifth century, B. C., and is sometimes referred to as the "Father of Medicine" (page 928, 58 L. R. A.):

> "Indeed he and his disciples attached but little importance to drugs as a therapeutic agent, but relied in acute diseases mainly upon diet; the variations necessary in its administration in different diseases being minutely defined. In the treatment of cases of chronic diseases, diet, exercise, and natural methods were chiefly relied upon. Indeed, in those days drugs as therapeutic agencies were of necessity of minor importance in the treatment of the sick, since they were few, and since chemical drugs were not discovered until long afterwards, to wit, about the fifteenth century."

In summing up this subject in his opinion the justice says, speaking for the whole court (page 929, 58 L. R. A.):

> "Thus we see that no system of therapeutics has been uniformly followed, and perhaps, as we have said, never will be. Indeed, we might go further, and show that at this day the regular practitioners of medicine, as they are known to the profession, recognize the efficaciousness of water, massage, electricity, and perhaps other external applications to the body, as scientific therapeutic agencies. It may not be amiss in this connection to instance the 'rest cure'—a thoroughly recognized scientific treatment for mental or nervous troubles. It consists in keeping the patient quiet and at rest, giving to him occasionally a massage, an application of electricity, a sponge bath, with proper diet. No drug is used, except a laxative occasionally, if necessary. The use of drugs, however, is a secondary consideration, and may be dispensed with altogether. Thus it is made entirely clear, both by definitions and history, that the word 'medicine' has a technical meaning, is a technical art or science, and *as a science the practitioners of it are not simply those who prescribe drugs or other medicinal substances as remedial agents, but that it is broad enough to include, and does include, all persons who diagnose disease, and prescribe or apply any therapeutic agent for its cure.*"

At this point the judge reviews the history of legislation on this subject in Alabama, and reaches these conclusions (page 930, 58 L. R. A.):

> "Thus has been the growth and development of the law in this state regulating 'the practice of medicine in any of its branches or departments as a profession.' From this growth and development, can it be seriously doubted that *it was not*

the intention or purpose of the legislative mind to restrict the examination of those desiring to practice medicine to that class of the profession who may prescribe drugs as therapeutic agents in the healing of diseases? We think not. On the contrary, the very first enactment on the subject (1823) prohibiting any person from prescribing for the cure of diseases for fee or reward without obtaining a license is a clear, unequivocal, and unmistakable declaration of the legislative purpose to deal with medicine and the practice of it in its broad and comprehensive sense—as a science or art of healing and curing diseases. And this purpose has been rather emphasized than otherwise in subsequent legislation on the subject. Our conclusion, therefore, is that the defendant was engaged in the practice of medicine, within the meaning of the statutes. This conclusion is fully supported by the decisions of other courts. In *Bibber* v. *Simpson*, 59 Maine, 181, Appleton, Ch. J., speaking for the court, said: 'The services rendered were medical in their character. True, the plaintiff does not call herself a physician, but she visits her sick patients, examines their condition, determines the nature of the disease, and prescribes the remedies deemed by her most appropriate. Whether the plaintiff calls herself a 'medical clairvoyant,' or a 'clairvoyant physician,' or a 'clear-seeing physician' matters little; assuredly, such services as the plaintiff claims to have rendered purport to be and are to be deemed medical.' So it was held that she was not entitled to recover for her services, she having no license to practice medicine. In *Hewitt* v. *Charier*, 16 Pick., 353, it was held (Shaw, Ch. J., delivering the opinion), that 'a person who practices bone-setting, and reducing sprains, swellings, and contractions of the sinews by friction and fomentation, but no other branch of the healing art, is a person practicing surgery, within the meaning of Stat. 1818, chap. 131, Sec. 1, which provides that no person practicing physic or surgery shall be entitled to the benefit of law for the recovery of his fees unless he shall have been licensed by the Massachusetts Medical Society, or graduated a doctor in medicine in Harvard University.' In *Davidson* v. *Bohlman*, 37 Mo. App., 576, it was held that 'the statutes restricting the right to practice medicine and surgery to registered physicians and surgeons, and requiring the filing of diplomas, apply to one who, as a physician, gives electric treatments. It is not necessary that one should administer internal remedies, in order to practice medicine within the meaning of the statutes' which prohibited the practice of, or the attempt to practice, medicine or surgery without first filing a diploma, etc. The case of *Eastman* v. *People, use of State Bd. of Health*, 71 Ill. App., 236, is directly in point. The appellant there, as here, was engaged in the practice of osteopathy. The statute of Illinois (Rev. Stat. 1893, chap. 91, sec. 11) defined 'prac-

titioners of medicine' in this language: 'Any person shall be regarded as practicing medicine within the meaning of this act who shall treat, operate on, or prescribe for any physical ailment of another.' The court, after saying that the appellant 'professes to be able to diagnose and advise in respect to a long list of diseases, and to furnish discriminating and efficient treatment to those who may come to him, and while he may rely wholly upon manipulation, flexing, rubbing, extension, etc., yet he professes to have skill and judgment in these methods, so as properly to adapt the treatment to each case, giving it what is appropriate in amount, and with repetition at such times and to such extent as may be dictated by his knowledge and experience,' and, after stating Bigelow's and Dunglison's definitions of 'medicine' held that the practice of osteopathy was the practice of medicine. We need only add that our statutes are not so materially different from the statute construed in that case as to impair the decision of it, in any degree, as an authority directly upon the question in hand. So also is the case of *Little* v. *State*, 60 Neb., 749; 51 L. R. A., 717; 84 N. W., 248 (being an osteopathy case), directly in point. See also *Underwood* v. *Scott*, 43 Kan., 714; 23 Pac., 942; *Jones* v. *People* use of State Bd. of Health, 84 Ill. App., 453; *People* v. *Gordon*, 194 Ill., 560; 62 N. E., 858. We have examined the cases relied upon by appellant. Some of them are perhaps in point, but are opposed to our view of the law."

B. The Purpose of the Act Also Demands Such a Construction

To this reasoning in *Bragg* v. *State, supra,* and that of the cases cited in support of the decision in that case we believe there can be no valid exception taken. The court construes the words of the act fairly and in their natural sense, and in this it is justified by the *purpose* of the legislature in passing the act. The court says (page 929, 58 L. R. A.):

"Is there anything in the language of the statutes which prevents giving to the word 'medicine' its legitimate technical use or meaning? This question can best be answered by tracing the history of the legislation on this subject culminating in the present statutes. Before doing so, however, we should bring to mind the purpose of these enactments, and constantly keep before us that *the legislative purpose was to protect the public against charlatanism, ignorance, and quackery.*"

Without going into the history of medicine, we may say that quackery in some form or other has existed from the earliest times. Thus we read of Hippocrates that he was one of the first whose teachings and writings were "free from the mysticism of a priesthood and the vulgar pretensions of a mercenary craft." And

coming down to more modern times we find Francis Bacon in his essay on "Boldness" using the instance of medical quacks to illustrate his point in regard to political impostors. "Surely," he says, "as there are mountebanks for the natural body, so there are mountebanks for the politic body; men that undertake great cures, and perhaps have been lucky in two or three experiments, but want the grounds of science and therefore cannot hold out." And John Dryden uses the same metaphor in the dedication to his translation of Vergil's Æneid: "Are radical diseases so suddenly remov'd? A mountebank may promise such a cure, but a skillfull physician will not undertake it."

It is from such "mountebanks for the natural body" that the legislatures of Michigan and other states have endeavored to protect the public in legislation such as this Medical Act. And this protection is of two kinds, aimed at two entirely different evils.

One purpose of the Act is to protect the public health. Incompetent, ignorant, unscrupulous persons who make extravagant and boastful claims of their ability to cure disease may cause direct injury to the health of persons who are induced to come to them for relief or cure in sickness; either by giving them something or doing some positive act that is injurious and makes the patient's condition worse than it was before; or by failing to give something or to do something which should be given or done, so that as a result the patient's health is not improved, or becomes progressively worse, in cases which a competent medical practitioner could cure or might alleviate. That is one evil that has resulted in the past, and would continue to result but for legislative regulation of the healing art. In fact, the evil is prevalent now in spite of regulative legislation.

The other evil is the obtaining of money from people in return for such incompetent, ineffective or hurtful treatment. And, as the poorest people in the state as a class are generally the most ignorant, and it is the ignorant people who are the easiest prey for charlatans, it follows that those persons in the state who can least afford to lose money are the very ones whom the charlatan dupes and impoverishes.

It seems perfectly plain now that both these elements enter into the purpose of this class of legislation. It is true, some courts have taken a narrow view of this phase of medical regulation, as well as of other phases. For instance, we find in one of the cases which has been cited time and again by those opposed to the views

we are advocating—in *Smith* v. *Lane* (1881), 31 N. Y. Supreme Court Reports (24 Hun), 632—a fine disregard for some of the startling wrongs that quackery may cause. This was an action to recover for services by plaintiff in the treatment of defendant and his wife for certain bodily disabilities. Plaintiff gave no drugs, his treatment consisting entirely of rubbing, kneading and pressure with the hands. There was a statute which prevented the recovery for "medical services" by one who had not complied with its provisions. On the ground that plaintiff had failed so to comply the referee dismissed the complaint; but on appeal this decision was reversed by the Supreme Court, General Term, First Department. This court, it will be remembered, was not the court of last resort in New York. However, the court, after recounting some of the dangers to health from malpractice, says:

> "No such danger could possibly arise from the treatment to which the plaintiff's occupation was confined. While it might be no benefit, it could hardly be possible that it could result in harm or injury. * * * "
>
> "It may be that credulous persons would be deceived into the employment of the plaintiff, and in that manner subjected to imposition. But it was no part of the purposes of this act to prevent persons from being made the subjects of mere imposition. * * * But because he has professed more than he has the ability to accomplish he cannot, on that account, be subjected to the disability provided for in this act. His system of practice was rather that of nursing than of either medicine or surgery. It could in no event result in any other injury to the person practiced upon than that of possible financial loss. No bodily disability or diseases could either result from or be aggravated by the applications made by him. And what he did in no just sense either constituted the practice of medicine or surgery. He neither gave nor applied drugs or medicines, nor used surgical instruments. * * * While his services may have afforded no benefit to the persons receiving them, he was not prohibited from performing them by anything in this act, and no other law was violated by the contract which the evidence tended to show had been entered into."

To hold, as the court did in that case, that it was no part of the purpose of the legislature to protect persons from "mere imposition" or from possible financial loss, seems to us an exceedingly narrow view to take of an important subject. But leaving that view as sufficiently discredited without further argument, let us see if the rest of the opinion is sound. The only injury that could possibly result to the person practiced upon, says the New York

court, is a financial loss: no bodily disability or diseases could either result from or be aggravated by the application made by the alleged medical practitioner in that case. We believe the court failed to realize that in the practice of the healing art there are as well sins of omission as of commission. Suppose a man whose system consists entirely of manipulation—rubbing, kneading, adjusting subluxations, etc.—holds himself out as being able to cure all diseases, and that a person threatened with, say, diphtheria comes to him for treatment. Whatever uncertainties there may still be in the healing art, statistics seem at least to show that in this disease antitoxin administered in the early stages is successful in a majority of cases. If, instead of administering antitoxin or advising the patient to go to some practitioner who will, the "manipulator" contents himself merely with rubbing, kneading and flexing the muscles, limbs or back-bone of his patient, for a few days or weeks and the patient dies—can it be said that the "manipulator" has done no other injury than to take his patient's money? Has he not rather lulled him into a sense of security by his claims that he could cure all diseases, and in that way kept his patient from going to some other doctor who would use the antitoxin? If this instance is an argument in favor of construing such statutes as the Michigan Medical Act to include all systems and methods whatever of the healing art—and we believe it is—the argument could be multiplied and strengthened by taking other diseases which progress rapidly, such as typhoid, small-pox and consumption. In such cases, time lost at the crucial period may mean health or even life lost.

We feel safe in saying that the courts of Michigan would not accept the reasoning of the court in *Smith* v. *Lane*. Furthermore, the case has been repudiated in its own jurisdiction.

In *People* v. *Allcutt* (1907), 102 N. Y. Suppl., 678; 117 App. Div., 546, the defendant was convicted of practicing medicine without being lawfully authorized, and on appeal the conviction was affirmed by the Supreme Court, Appellate Division, First Department. On final appeal, the Court of Appeals, which is the court of last resort in New York, affirmed the decision of the Supreme Court, Appellate Division, without filing an opinion (189 N. Y., 517; 81 N. E., 1171).

The evidence was that defendant had exhibited a sign: "Dr. E. Burton Allcutt, Mechano-Neural Therapy."

The complaining witness testified that she had called on defendant several times, complained of headaches, stomach trouble, etc., and had submitted to an examination by defendant; that defendant treated her back with his fingers, saying that he was treating her nerves; that he treated her spine by putting his fingers upon her spine, "the ends of the fingers, a touching sensation, nothing like kneading," for about an hour; that he varied that treatment on the neck, breast, heart, and stomach in the same way, just by his fingers. It developed that witness was not sick, but was acting as a detective.

Defendant testified that mechano-neural therapy means mechanical nerve treatment, a gentle pressure on all parts of the body; that the whole theory of this science is that disease comes from the lack of blood circulation, and that the treatment proceeds upon the theory of assisting the circulation back into the normal condition.

The statute reads:

> "Any person who, not being then lawfully authorized to practice medicine within this state and so registered according to the law, shall practice medicine within this state without lawful registration, * * * shall be guilty of a misdemeanor."

The court says on page 680:

> "*To confine the definition of the words 'practice medicine' to the mere administration of drugs or the use of surgical instruments would be to eliminate the very cornerstone of successful medical practice, namely, the diagnosis.* It would rule out of the profession those great physicians whose work is confined to consultation, the diagnosticians, who leave to others the details of practice. Section 146 (page 1543) of the public health law provides that persons desiring to practice medicine must pass a regent's examination, made up of 'suitable questions for thorough examinations in anatomy, physiology and hygiene, chemistry, surgery, obstetrics, pathology and diagnosis and therapeutics, including practice and materia medica.' Diagnosis would therefore seem to be an integral part of both the study and practice of medicine, so recognized by the law as well as common sense. The correct determination of what the trouble is must be the first step for the cure thereof. It is a well-known fact that the disease popularly known as consumption may, if discovered in time, be arrested, if not entirely eradicated from the system, by open-air treatment in the proper climate, and that in such cases use of drugs has been practically given up. Would the physician, in such a case, who by his skill discovered the incipient disease, advised the open-air treatment, and refrained from administering drugs, not be practicing medicine? *It may be difficult by a precise definition to draw the*

line between where nursing ends and the practice of medicine begins, and the court should not attempt, in construing this statute, to lay down in any case a hard and fast rule upon the subject, as the courts have never undertaken to mark the limits of the police power of the state, or to have precisely defined what constitutes fraud. What the courts have done is to say that given legislation was or was not within the limits of the police power, or that certain actions were or were not fraudulent."

The court considers the case of *Smith* v. *Lane*, 24 Hun, 632, decided in 1881, and quotes from the opinion in that case. Continuing the court says on page 681 (this is in 1907):

"It will be noted that that was a private action between the parties to a contract, for services rendered, and that the public were not represented."

"*We do not consider the remarks of the learned judge, above quoted, as being an exhaustive or exclusive definition of the term 'practice of medicine.'* * * *

"The appellant cites five cases in other states as in harmony with *Smith* v. *Lane*, *supra*. *State* v. *Liffring*, 61 Ohio St., 39; 55 N. E., 168; 46 L. R. A., 334; 76 Am. St. Rep., 358, was under the peculiar language of the statutory definition which was held to require the use of drugs in order to constitute the practice of medicine. There was subsequently an amendment of the Ohio statute, and the subsequent cases of *State* v. *Gravett*, 65 Ohio St., 289; 62 N. E., 325; 55 L. R. A., 791; 87 Am. St. Rep., 605, and *State* v. *Marble*, 72 Ohio St., 21; 73 N. E., 1063; 70 L. R. A., 835; 106 Am. St. Rep., 570, were decided the other way. *State* v. *Herring*, 70 N. J. Law, 34; 56 Atl., 670, was also decided upon the wording of the statute. *Nelson* v. *State Board of Health*, 57 S. W., 501; 50 L. R. A., 383, a Kentucky case, and *State* v. *McKnight*, 131 N. C., 717; 42 S. E., 580; 59 L. R. A., 187, are not entitled to be considered authorities in this jurisdiction, inasmuch as they proceed upon the proposition that in those states it would be unconstitutional for the Legislature to limit the right to practice medicine—a doctrine counter to that held in the rest of the Union. * * *

"As opposed to the cases following *Smith* v. *Lane*, the courts of Massachusetts, Maine, Michigan, Iowa, Missouri, Colorado, Nebraska, Illinois, Ohio, Alabama, Indiana, New Mexico, South Dakota, and Tennessee refuse to restrict the 'practice of medicine' to the administration of drugs or the use of surgical instruments. In *Bragg* v. *State*, 134 Ala., 165; 32 South., 767; 58 L. R. A., 925, decided in June, 1902, upon provisions of the Civil Code of 1896, of that state (sections 3261-3266) and of the Criminal Code of 1896 (section 5333), in effect identical in language with the provisions of the statutes of this state, the court, in a most exhaustive and instructive

opinion, declared that both the man who used and the man who did not use drugs were yet engaged in the art of healing and curing human diseases; that the purpose of the medical law was to protect the public against charlatanism, ignorance, and quackery; and that it was not the legislative intent to restrict the examination of those desiring to practice medicine to that class of the profession who may prescribe drugs. In that case, and in the note to *O'Neil* v. *State* (Tenn.), 90 S. W., 627; 3 L. R. A. (N. S.), 762, may be found collected the cases in the several states, as indicated supra, which did not follow the definition of practice of medicine as limited and restricted in *Smith* v. *Lane*."

"We are of the opinion, from the general current of the authorities throughout the country, and from examination of the history and growth of our own public health statutes, that we should not apply the rule as claimed to have been laid down in *Smith* v. *Lane*. When we find, as in this case, a defendant holding himself out by sign and card as a doctor, with office hours, who talks of his patients and gives treatments, who makes a diagnosis and prescribes diet and conduct and remedies, simple though they be, and *who asserts the power to cure all diseases that any physician can cure without drugs, and also diseases that they cannot cure with drugs*, and who takes payment for a consultation wherein there was an examination and determination of the trouble, that is, a diagnosis, as well as payment for subsequent treatment, even if no drugs are administered, *we must hold that he comes within the purview of the statute* prohibiting the *practice of medicine* without being lawfully authorized and registered."

By not only adopting the decision of the Supreme Court, Appellate Division, but failing to dissent from the reasoning of that court, the New York Court of Appeals, we believe, expressed its approval of that reasoning. This effectually disposes of *Smith* v. *Lane*.

Before citing cases from other jurisdictions holding that the purpose of such legislation, as we have indicated, is to protect the public from charlatans and unscrupulous impostors, let us pause for a moment to make clear that we do not in this brief go into the merits of *Chiropractic* as a system of treatment, nor do we class its practitioners as quacks and charlatans. Although some of the quotations from their advertisements and from their school announcements as included in our "Statement of Facts" show that they make claims so great as to cause one to question their reasonableness, still, on the record we have here that question does not properly arise. It is true, some of these claims may render

those making them liable under Subdivision "Sixth" of Sec. 3 of the Michigan Medical Act. It is there provided that "It shall be a misdemeanor for any person to be guilty of 'unprofessional and dishonest conduct' as defined in this act." Such conduct is declared by the act to mean, among other things: "2. The obtaining of any fee on the assurance that an incurable disease can be permanently cured; * * * 4. All advertising of medical business in which grossly improbable statements are made, or where specific mention is made in such advertisements of venereal diseases or diseases of the genito-urinary organs." If Chiropractors come within the scope of the Michigan Medical Act, the publishers of statements such as some of those quoted by us in our "Statement of Facts" are clearly violating this section of the act. But we do not care to pursue that subject further here, as the main question before us is whether or not Chiropractic constitutes the practice of medicine or surgery in any of its branches. Neither shall we comment in detail upon the stress which Chiropractic lays upon the principle or healing power which it speaks of as *Innate Intelligence*. If there is any claim of novelty or discovery in this, we shall content ourselves merely with the assertion that it is, at most, a re-stating of an old, old principle. Thus, we read again of Hippocrates, born about 460 B. C.:

> "Hippocrates based his principles and practice on the theory of the existence of a spiritual restoring essence or principle, *physis*, the *vis medicatrix naturae*, in the management of which the art of the physician consisted. This art could, he held, be only obtained by the application of experience, not only to disease at large, but to disease in the individual. He strongly deprecated blind empiricism. * * *" (Vol. 11, Encyc. Britt., 9th ed.—reprint, 1890, page 853; title, "Hippocrates.")

Whether or not Chiropractors as a class, or individuals among them, are quacks is a point we are not directly interested in now. We do not assert that they are. All we need to prove is that they are practicing medicine or surgery within the meaning of the act. Suppose that a man very learned and skillful in the practice of medicine, including, let us assume, the prescribing of drugs, should come to Michigan from some foreign country or state and begin to practice there without applying for a certificate of registration, or in any other way attempting to comply with the requirements of the act. Suppose, further, that he was exceptionally successful and effected the most remarkable cures, and was free from any

imputation of charlatanry. In the face of the positive requirements of the Medical Act could it be doubted that he would be violating the statute? So in *State* v. *Miller* (1910), — Iowa, —; 124 N. W., 167, the Supreme Court of Iowa held that, in a prosecution for practicing medicine without a license, where testimony had been admitted to show that defendant's treatment was beneficial to some of his patients, an instruction charging the jury to disregard such evidence was proper. In short, the enforcement of the statute does not depend upon whether a man is skillful and honest, or incompetent and unscrupulous, but solely upon whether that man is practicing medicine or surgery. Our emphasis on the dangers of quackery has been only to bring out the legislative *purpose* to aid us in ascertaining the scope of the act.

To give a few additional judicial expressions on the *object* of such statutes:

The Supreme Court of Michigan itself has expressed a decided opinion on this point in the passage we have already quoted under another heading of this brief from *People* v. *Phippin* (1888), 70 Mich., 6, 19; 37 N. W., 888:

> "A great majority of the public know little of the anatomy of the human system, or of the nature of the ills that human flesh is heir to; there is no profession, no occupation or calling, where people may more easily or readily be imposed upon by charlatans."

In *State* v. *Buswell* (1894), 40 Neb., 158; 24 L. R. A., 68; 58 N. W., 728, the Nebraska Supreme Court said of a similar statute in a case in which defendant had practiced Christian Science (page 72, 24 L. R. A.):

> "*The object of the statute is to protect the afflicted from the pretensions of the ignorant and avaricious, and its provisions are not limited to those who attempt to follow beaten paths and established usages.* The conservatism resulting from the study of standard authors might be somewhat depended on to minimize the evils attendant upon unlicensed practitioners' attempts to follow regular and approved methods, although, as against even these, the law should be enforced. Still more stringently should its provisions be rendered effective against pretensions based upon ignorance, on the one hand, and credulity, on the other."

In a later case, *Little* v. *State* (1900), 60 Neb., 749; 51 L. R. A., 717; 84 N. W., 248, where the defendant was an osteopath, the same court said, in speaking of the Buswell case (page 719, 51 L. R. A.):

"The doctrine declared in that case will carry out the legislative intent, and effect the object of the statute, which is 'to protect the afflicted from the pretensions of the ignorant and avaricious, no matter whether the persons pretending to heal bodily or mental ailments do or do not profess to follow beaten paths and established usages.' In construing statutes *effect should be given to the intention of the legislature.*" See also, *Gee Wo* v. *State* (1893), 36 Neb., 241; 54 N. W., 513 (quoting *People* v. *Phippin*).

In *State* v. *Pollman* (1908), 51 Wash., 110; 98 Pac. R., 88, another case where the defendant was a "drugless physician" and gave treatments by manipulating the body, limbs, muscles and nerves, and flexing and manipulating the joints, the Washington Supreme Court, in affirming his conviction, said of the statute (page 118, 51 Wash.):

"Its purpose being to prevent deception, the courts will give to it that meaning which will most effectually accomplish that purpose."

In *O'Neil* v. *State* (1905), 115 Tenn., 427; 3 L. R. A. (N. S.), 762; 90 S. W., 627, the defendant professed to cure diseases by the application of a certain kind of light. The Supreme Court of Tennessee sustained a conviction for practicing medicine without a license. It quotes (page 769, 3 L. R. A. (N. S.), that able passage from Mr. Justice Field's opinion in *Dent* v. *Virginia* (1889), 129 U. S., 114; 32 L. ed., 623; 9 Sup. Ct. Rep., 231, which we have had occasion to quote in another place in this brief:

"Few professions require more careful preparation by one who seeks to enter it than medicine. It has to deal with those subtle and mysterious influences upon which life and health depend, and *requires a knowledge, not only of the properties of vegetable and mineral substances, but of the human body in all its complicated forms and their relation to each other, as well as their influence on the mind.* The physician must be able to detect readily the presence of disease, and prescribe appropriate remedies for its removal. Everyone may have occasion to consult him, but comparatively few can judge of the qualifications of learning and skill he possesses. Reliance must be placed upon the assurances given by his license, issued by an authority competent to judge in that respect, that he possesses the requisite qualifications."

And in *State* v. *Oredson* (1905), 96 Minn., 509; 105 N. W., 188, the Minnesota Supreme Court said of the statute in that state (page 512, 96 Minn.):

"The act was not enacted for the benefit of any profession or of any school or theory of medicine. *It was designed to secure the public in whole and in every part from quacks, humbugs and charlatans masquerading under the venerable and honorable titles of surgeons, physicians, and doctors, and to protect the public in a just reliance upon the one using these titles as a man of proper education and sufficiently trained in the sciences involved.* A just enforcement of that act would tend to prevent the most deplorable swindling of the ignorant poor, who can least afford to pay for the luxury of deception, and who are the most likely to be the dupes of ostensible practitioners, whose competency has not been determined by law, and whose moral deficiencies are evidenced by their false pretenses. Its terms should be construed, so far as reasonably may be, so as to tend to eliminate the suffering of an individual from the misuse of inert drugs when potent ones are needed, and of powerful agencies productive of ill where proper ones might bring relief or effect a cure, so as to avoid many evils of malpractice, and so as to minimize the exposure of the community at large to the spread of avoidable pestilence. The act is at once a statute of frauds and a health ordinance."

C. Fact that Chiropractors Have No Direct Use for Some Subjects Required by the Act Does Not Make the Act Inapplicable to Them

Nor is it a good argument to contend that Chiropractors should not be held to be included in the Michigan Medical Act because in their system of healing they have no direct "use" for some of the branches of learning in which the act requires applicants for certificates to be examined. In the first place, there are only comparatively few subjects required by the act which the Chiropractic schools do not themselves purport to teach. On page 9 of our "Statement of Facts," for instance, is a quotation showing that the Palmer School of Chiropractic, "Chiropractic's Fountain Head," gives a diploma conferring the degree of "D.C., Doctor of Chiropractic" upon the completion of a course and examinations comprising anatomy, physiology, pathology, dissection, analysis, hygiene, Chiropractic orthopedy, nerve tracing, histology, gynecology, obstetrics, theory, philosophy and practice of Chiropractic. Does this seem, then, to show that it would be so monstrous an injustice to require the prospective Chiropractor to take an examination in the subjects prescribed in "Sec. 3, First" of the Medical Act? Suppose that some of the prescribed subjects for examination are not *directly* "useful" to a Chiropractor; indirectly they cannot but be beneficial to him and make him surer and more skillful. But

leaving aside this indirect benefit even, there is no great and crying hardship imposed upon the Chiropractor by requiring him to take the examination.

We may begin with the proposition that absolutely perfect legislation on any subject is a fair dream that will never be realized. In order to guard against certain evils that need regulation and suppression, the legislature passes laws; and it is commonly the case that these laws bear a little harder on one man than on his neighbor. Nevertheless, the rule of the greatest good to the greatest number will prevail over individual instances of inequality.

But to take some specific examples that illustrate our point and at the same time silence the Chiropractors' criticism of this feature of the act: Take the case of a young man who, before he enters a medical college even, has fully made up his mind that he will become a specialist in, say, abdominal surgery; who really follows out his intention and at once after graduation confines himself to his chosen specialty. We take it that there is no question that he was subject to the Medical Act and had to take examinations covering the subjects prescribed in that act; and yet are there not many subjects required of him that he will never "use" directly in his practice? The "injustice" here is as great, at least, as that in the case of the Chiropractor; yet do we hear any cries of "We're not subject to the Medical Act because we don't 'need' some of the subjects required by it!"?

Take another familiar instance: Suppose a young man has cherished from childhood an ambition to specialize in the law of fire insurance—just that one branch of law and nothing else. Suppose, after graduating from law school and taking his bar examination, he carries out his program and strictly confines his practice to the law of fire insurance. Now, has he not been required by his bar examination to know some subjects that are not *directly* "useful" to him in his life-work? Yet is this objection ever seriously made? Or, if made, is it ever heeded by cutting down the requirements of the bar-examination for such candidates as assert that they are going to specialize in some one branch of jurisprudence?

If any decided case is required as authority for this proposition, we refer to *State* v. *Heath* (1904), 125 Iowa, 585; 101 N. W., 429, where the Iowa Supreme Court answered such a contention. It said (page 431, 101 N. W.):

> "Section 2576 of the Code requires all, regardless of the particular school, to be examined in anatomy, physiology, general chemistry, pathology, surgery, and obstetrics. Surely it is not unreasonable to exact for every one who proposes to undertake to prevent, cure, or alleviate disease and pain some knowledge of the nature of disease, its origin, its anatomical and physiological features, its causative relations, and of the preparation and action of drugs. At any rate, the state, in order to guard the people against the effects of imposition or ignorance, had the right to exact such knowledge."

And the court suggests another possible answer to the objection when it says (*ibid.*):

> "The examination in materia medica, therapeutics and the principles and practice of medicine must correspond to the school according to which the applicant proposes to practice. If no medicine is to be used, it necessarily follows that proficiency in these subjects is not required. These views are in harmony with the authorities generally, and, as applied to those professing to be magnetic healers, have direct support in *People* v. *Phippin*, 70 Mich., 6; 37 N. W., 888, and *Parks* v. *State* (Ind. Sup.), 64 N. E., 862; 59 L. R. A., 190."

In this connection we call attention to *"Sec. 3, First, c and d"* of the Michigan Medical Act, which makes fair provision for just such cases as this.

Further authorities on this point are *State* v. *Marble* (1905), 72 Ohio St., 21; 70 L. R. A., 835; 73 N. E., 1063, and *O'Neil* v. *State* (1905), 115 Tenn., 427; 3 L. R. A. (N. S.), 762; 90 S. W., 627.

In the *Marble* case the Ohio Supreme Court said (page 841, 70 L. R. A.):

> "To admit that a practitioner may determine what treatment he will give for the cure of disease, and that the state may examine him only respecting such treatment, would be to defeat the purpose of the statute, and to make effective legislation of this character impossible. If the recent statute is too comprehensive, the remedy is with the legislature."

And in the *O'Neil* case, the Tennessee Supreme Court said (page 769, 3 L. R. A.—N. S.):

> "Surely it is not unreasonable to demand of everyone who professes to treat disease some knowledge of the disease, its origin, its anatomical and physiological features, and its causative relations, and the effects of drugs. At any rate the State, in order to guard the people, had the right to exact such knowledge."

To the same effect see also *State* v. *Adkins* (1910), —Iowa, —; 124 N. W., 627, at page 628.

D. In Construing the Act, Effect Must Be Given to the Legislative Purpose

Since the purpose of the legislature in the Michigan Medical Act is, as we have shown, to protect the people of the state from charlatanry, as well with respect to their money as to their health, we must try to give effect to that purpose in construing the words *"practice of medicine or surgery,"* and *"practice of medicine and surgery in any of its branches."*

That the rules of statutory interpretation justify—even require—this is established by undisputed authority. As Chancellor Kent puts it in 1 Kent's Commentaries, 462:

> "The real intention, when accurately ascertained, will always prevail over the literal sense of terms. When the expression in a statute is special or particular, but the reason is general, the expression should be deemed general. * * *
>
> "This was the doctrine of Modestinus, Scævola, Paulus, and Ulpianus, the most illustrious commentators on the Roman law. When the words are not explicit, the intention is to be collected from the context, *from the occasion and necessity of the law, from the mischief felt, and the objects and the remedy in view;* and the intention is to be taken or presumed, according to what is consonant to reason and good discretion."

To the same effect see 2 Sutherland's Statutes and Statutory Construction (2nd Ed., by Lewis), 713, section 370:

> "The mere literal construction ought not to prevail if it is opposed to the intention of the legislature apparent from the statute; and if the words are sufficiently flexible to admit of some other construction by which that intention can be better effected, the law requires that construction to be adopted. The intention of an act involves a consideration of its subject-matter, and the change in, or an addition to, the law which it proposes; hence, the supreme importance of the rule that a statute should be construed with reference to its general purpose and aim. 'Where the words,' says Lush, J., 'employed by the legislature do not directly apply to the particular case, we must consider the object of the act.'"

And in section 374, page 717:

> "The natural import of words is their literal sense; but this may be greatly varied to give effect to the fundamental purpose of a statute."

Again in section 376, page 721:

> "The mere literal construction of a section in a statute ought not to prevail if it is opposed to the intention of the legislature apparent by the statute; and if the words are

sufficiently flexible to admit of some other construction it is to be adopted to effectuate that intention. The intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act."

And again in section 456, page 864:

"Where the meaning of a statute or any statutory provision is not plain, a court is warranted in availing itself of all legitimate aids to ascertain the true intention; and among them are some extraneous facts. *The object sought to be accomplished exercises a potent influence in determining the meaning of not only the principal, but also the minor provisions of a statute. To ascertain it fully the court will be greatly assisted by knowing, and it is permitted to consider, the mischief intended to be removed or suppressed, or the necessity of any kind which induced the enactment.* If the statute has been in force for a long period it may be useful to know what was the contemporary construction; its practical construction; the sense of the legal profession in regard to it; the course and usages of business which it will affect. It may be necessary to apply the meaning of terms of art which it may contain."

Considering the statute in the light of this rule of interpretation, and keeping in view the far-reaching purpose of the Medical Act, as expressed by the courts of Michigan and other jurisdictions in the opinions we have quoted from; bearing in mind that this statute was not passed to favor any particular body or school of practitioners of the healing art, *but was intended to protect the public from impostors who not only endanger health, but also take money under false pretenses of their ability to cure;* remembering that this is "at once a health ordinance and a statute of frauds," need we hesitate to give to the words of the statute that meaning which is so unanimously sanctioned by the surest and best authorities on the use of words?

The legislature of Michigan, when it said in Section 3, "all men and women who wish to begin the practice of medicine and surgery in any of its branches * * * shall make application * * * for a certificate of registration," meant all who wish to begin to practice the science of preventing, alleviating or curing disease, physical injuries and ailments; and it did not, either by the spirit or the letter of its words, limit their application to those who used drugs and instruments. And when the legislature said in Section 7, "Any person who shall practice medicine or surgery in this State, who is not the lawful possessor of a certificate of registration * * * shall be deemed guilty of a misdemeanor," it likewise

meant to include all who made a practice of treating persons for disease or injury, without regard to the method of treatment.

E. Some Judicial Interpretations of Similar Statutes

We have already referred to several authorities which fully sustain this interpretation; but before closing this part of the argument we shall cite and quote from a few more of the leading cases that have passed on this point.

And first of all, there is the case of *People* v. *Phippin* (1888), 70 Mich., 6; 27 N. W., 888, in which the Supreme Court of Michigan had to pass on nearly identical language in the old Medical Act of 1883, as amended in 1887: "It shall not be lawful for any person *to practice medicine or surgery, or any branch thereof (except dentistry)* * * * without having first registered * * *"; and "whoever advertises or holds himself out to the public as authorized *to practice medicine or surgery* when in fact he is not * * * shall be deemed guilty of a misdemeanor * * *."

Phippin, a "magnetic healer," was arrested for unlawfully advertising and holding himself out to practice medicine. He was tried and convicted in the police court and on appeal to the Circuit Court, the court overruled a motion to dismiss the complaint and warrant, quash the proceedings, and discharge the defendant. After trial by a jury and verdict, the court imposed a fine. On appeal to the Supreme Court it was contended by defendant that there was no evidence to go to the jury that defendant had *advertised or held himself out to practice medicine.* The Supreme Court held that there was no force to this objection and affirmed the conviction. They say:

> "It was shown upon the trial that he was called upon by Mr. Jones to visit his wife, and did visit her, claiming to be a *magnetic healer;* that Mrs. Jones was sick, and her husband got him to cure her if he could, and he treated her as a *magnetic healer.* It is also shown that in June or July respondent was called to the house of Mr. Wheeler, and there treated Mrs. Wheeler and child as a *magnetic healer.* On June 24, 1884, the respondent signed and swore to a paper that purported to be a medical practitioner's sworn statement, and he had a sign out as 'Dr. W. W. Phippin, *Magnetic Healer.*' Mr. Wheeler's child died, and a 'certificate of death' was made by the respondent."

This was about all the evidence there was that defendant had *advertised or held himself out to practice medicine.* It will be noted that the acts of so holding himself out were these:

1. Calling on Mrs. Jones, at her husband's request and claiming to be a *magnetic healer.*

2. Treating Mrs. Jones as a *magnetic healer* upon her husband's solicitations to cure her sickness.

3. Treating Mrs. Wheeler and child as a *magnetic healer.*

4. Signing certain reports and statements as "Dr." and exhibiting a sign, "Dr. Phippin, *Magnetic Healer.*"

In each and every one of these acts (except perhaps in signing the reports and statements), which constitute the chief evidence on which defendant was convicted and on which the Supreme Court affirmed the conviction, defendant was plainly holding himself out as a *magnetic healer.* Reducing the proposition to its lowest terms, the decision of the Supreme Court was that *holding himself out* as a *magnetic healer* amounted to *holding himself out to practice medicine.* And the conclusion from this is inevitable that the decision proceeded upon the proposition that *magnetic healing* is included in *"to practice medicine."* But *magnetic healing* is also a drugless treatment; the opinion does not affirmatively so state, but that is the generally accepted meaning of the appellation, and the opinion does not state that drugs were given by defendant in his treatments. So that we have this result: *a drugless system of healing* was held by the court to be included in the meaning of *"to practice medicine."*

Nor is the force of this decision as an authority weakened by the fact that two justices dissented from the decision of the majority; for the dissent was expressly placed on the grounds of the alleged defective title and the unconstitutionality of the act, and not upon the questions of fact or of evidence.

We contend that this case is a strong authority in our favor if, as we believe the fact was, the defendant therein was practicing as what may be termed a "drugless healer." For, at bottom, that is precisely what our present investigation seeks to ascertain: Whether or not a "drugless healer" can be said to "practice medicine or surgery," etc., within the meaning of the present Medical Act, whose language in this respect is nearly identical with that of the old act under which Phippin was tried.

We shall now refer to the only case that has come to our notice in which a court of appeal has passed upon the question, whether

Chiropractic is subject to an act regulating the practice of medicine. That case is *State* v. *Miller* (1910), — Iowa, —; 124 N. W., 167; and the decision merely follows the modern tendency of the great majority of courts, to give effect to the intent of the legislature in passing such statutes, when it holds **that Chiropractic is included within the scope of the Iowa act.**

The indictment charged that defendant "did wrongfully and unlawfully publicly profess to be a physician and assume the duties of a physician, and * * * did publicly profess to cure and heal diseases, nervous disorders, displacements, injuries, and ailments by means of a certain system and treatment known as Chiropractic" without, etc. Defendant advertised "Dr. F. M. Miller, Chiropractor, * * *. Cure of disease follows Chiropractic adjustment because Chiropractic removes the cause. Chiropractic is a Distinct and Complete Drugless and Knifeless System and has Nothing in Common with Osteopathy, Massage, Swedish Movement or any other system. Chiropractic is successful in all forms of disease. This means your Disease. If your case is numbered among those supposed impossibilities, do not despair. Try Chiropractic and get well. * * * Chiropractic is a common sense treatment. It will bear investigation. It is based on a correct knowledge of the nervous tissues. It adjusts all displacements and allows *the innate builder* to reconstruct the broken down tissues."

The evidence showed that the defendant treated patients for a consideration, and that he professed to cure and heal divers diseases; that he gave no medicine, nor did he prescribe medicine; that his system consisted of certain mechanical appliances which were used in connection with hand manipulations and an electric vibrator.

The Supreme Court in holding that this evidence was sufficient to sustain a conviction under the Iowa Medical Act (which does not differ essentially from that of Michigan) said:

> "It is most earnestly urged that the evidence wholly fails to show that any offense was committed by the defendant. But with this contention we cannot agree. The facts in this case bring it clearly within the construction given the statute in *State* v. *Edmunds, supra* (1904), 127 Iowa, 333; 101 N. W., 431, *State* v. *Blair, supra* (1900), 112 Iowa, 466; 84 N. W., 532; 51 L. R. A., 776, and *State* v. *Heath,* 125 Iowa, 585; 101 N. W., 429. The cases from other jurisdictions cited by the appellant are, of course, not controlling. In fact, most of them are based on statutes unlike our own."

Here is an authority squarely in point—considering the self-same system of healing and the same kind of statute. The reasoning of the court in this case and in those which it cites is sound, solid and logical.

There have also been decided in the last ten or fifteen years a number of cases in which the question to be decided was whether or not divers other systems of healing, such as osteopathy, Christian Science, "mechano-neural therapy," "magnetic healing," etc., were included within the scope of various medical acts. These medical acts, while differing from the Michigan Medical Act and from each other in non-essential details, were sufficiently like the Michigan Medical Act to make the decisions construing them authorities available in the present discussion.

Many of the cases we cite in this brief deal with the practice of osteopathy; and we believe these to be squarely on all fours with this part of our argument; *not* because *Chiropractic* and osteopathy are the same—for practitioners of both systems unite in denying this, and we firmly believe they are right in their denials; but because the same ***legal*** question arises under both with respect to this act, since they are both ***drugless*** systems of healing, and both depend upon some kind of manipulation for their efficacy. We shall, therefore, have occasion to use a number of such cases involving osteopathy; but in the next section of our brief shall show that they are so far different as to keep Chiropractic from coming under the operation of the Michigan Osteopathic Act.

As some of the cases supporting our views are decided partly on the ground that the practitioners in those cases used, on signs or in advertisements, some title such as Doctor, Dr., etc., we shall at this place point out *Sec. 9,* of the Michigan Medical Act which provides that "when any person shall append the letters M.B. or M.D. or prefix the title *'Dr.' or Doctor, or any other sign or appellation* in a medical sense to his name, it shall be prima facie evidence of practicing medicine and surgery within the meaning of this act." Reference to our "Statement of Facts" will show that the schools of Chiropractic confer the degree of *"D.C.=Doctor of Chiropractic,"* and that Chiropractors generally append these letters, D.C., to their names in advertisements and on professional signs and cards.

Commonwealth v. *Jewelle* (1908), 199 Mass., 558; 85 N. E., 858, is a strong authority in our favor, because the statute in question therein in express terms excepted from its operation

osteopathists (as is also the case in the Michigan Medical Act); and it excepted also pharmacists, clairvoyants, magnetic healers and a number of other special practitioners. And yet, in spite of the self-imposed limitations of the statute, the Massachusetts Supreme Judicial Court declared that there was still a territory—included in the term "practice of medicine," and still not coming within the express exceptions of the statute—wherein might be included other systems of healing which eschewed the use of drugs, besides those so excepted.

The defendant in that case had been convicted of practicing medicine without being lawfully authorized, and the decision of the Supreme Judicial Court depended upon the correctness of certain charges of the trial court. In considering these, the court refused to be bound by the narrow definition of "practicing medicine" which the defendant urged upon it and says (page 859, 85 N. E.):

> "The judge allowed the jury to find that *one might practice medicine within the meaning of the statute, that is, might practice the healing art, or the art or science which relates to the prevention, cure or alleviation of disease, without necessarily prescribing or dealing out a substance to be used as a medicine. In this we think he was right. It would be too narrow a view of the practice of medicine to say that it could not be engaged in in any case or class of cases otherwise than by prescribing or dealing out a substance to be used as a remedy. The science of medicine, that is, the science which relates to the prevention, cure or alleviation of disease, covers a broad field, and is not limited to that department of knowledge which relates to the administration of medicinal substances.* It includes a knowledge, not only of the functions of the organs of the human body, but also of the diseases to which these organs are subject, and of the laws of health and the modes of living which tend to avert or overcome disease, as well as of the specific methods of treatment that are most effective in promoting cures. It is conceivable that one may practice medicine to some extent, in certain classes of cases, without dealing out or prescribing drugs or other substances to be used as medicines. *It is conceivable that one may do it in other ways than those practiced as a part of their respective systems, by either 'osteopathists, pharmacists, clairvoyants or persons practicing hypnotism, magnetic healing, mind cure, massage cure, science, or the cosmopathic method of healing.'*
>
> "The purpose of the statute seems to be to permit the practice of these several methods of treatment, including everything that *strictly* belongs to each; *but not to permit the unlicensed practice of medicine otherwise. If a practice of*

medicine otherwise, without dealing out or prescribing drugs or other substances to be used as medicine, is possible, the rulings and refusals to rule were right. We think such a practice of medicine is possible."

Hewitt v. *Charier* (1835), 33 Mass. (16 Pickering), 353, another case from the same state, is one of the earliest cases in the country to consider this subject. It was an action of assumpsit for services in attempting to cure defendant's son of *a contraction of the sinews in the neck;* and the defense was that plaintiff had not been licensed by the Massachusetts Medical Society, nor been graduated as a doctor of medicine. It was admitted that plaintiff professed to practice no branch of the healing art except that of bonesetting, and reducing sprains, swellings, and contractions of the sinews, *by friction* and fomentation. The Supreme Judicial Court of Massachusetts in an opinion by that great jurist, Mr. Chief Justice Shaw, held that the plaintiff should be nonsuited. The eminent judge says (page 355):

"The first question for the Court is, whether, upon the facts agreed, the plaintiff can be held to be engaged in the practice of physic or surgery. It appears that he professes and practises bonesetting and reducing sprains, swellings and contractions of the sinews, by friction and fomentation; but no other department of the curing art. By bonesetting we understand the relief afforded *as well in cases of dislocation, as in those of fracture. The Court are of opinion, that this brings him within the meaning of the statute, as one who practices physic or surgery.* We think it not necessary for one to profess to practice generally, either as a physician or surgeon, to bring him within the operation of this statute, but that it extends to any one engaging in practice in a distinct department of either profession, and that *the plaintiff's practice forms a considerable department in the practice of surgery."*

Commonwealth v. *St. Pierre* (1899), 175 Mass., 48; 55 N. E., 482, arose on a complaint under the registration act alleging that defendant "did hold himself out to the public as a physician and surgeon" without being duly registered as a physician. The verdict was guilty; but the Supreme Judicial Court of Massachusetts sustained exceptions to the exclusion of certain testimony offered by defendant on cross examination. The court said, however (page 50, 175 Mass.), "As the questions involved in the other exceptions may arise in a new trial, they may be briefly disposed of here"; and it lays down these rules (page 51):

"3. Proof that the defendant acted either as a physician *or* surgeon was sufficient to support the complaint which charged him with holding himself out as a physician *and* surgeon. There is but one offense, and that may be committed by the defendant's holding himself out as a physician or a surgeon; if the complaint charges that the offense is committed by the defendant's holding himself out *both* as a physician and surgeon, the whole offense is proved if he is shown to have held himself out as *either*. *Commonwealth* v. *Dolan*, 121 Mass., 374.

"4. The ruling that if the defendant held himself out as an *eye specialist* he held himself out as 'one who devoted himself to a branch of the healing art, which is the profession of the physician and surgeon,' and that 'if the defendant held himself out as an *eye specialist* he held himself out as a physician and surgeon, within the meaning of the statute,' was correct."

These rulings, coming from so respectable an authority, are pertinent here to the points: first, that it is an offense against such a statute to practice *either* medicine *or* surgery without due registration, and secondly, that one who practices any branch or specialty, no matter how limited and narrow its range, of the science of preventing, healing and alleviating disease and injury is practicing medicine and surgery within the meaning of such a statute as that under consideration.

People v. *Allcutt* (1907), 102 N. Y. Suppl., 678; 117 App. Div., 546 (affirmed in the Court of Appeals in 189 N. Y., 517; 81 N. E., 1171), we have already referred to at length. As we then showed, its effect is to completely discredit and overrule the earlier case of *Smith* v. *Lane*, 24 Hun., 632, one of the cases that first gave rise to that narrow interpretation of these medical acts which failed to comprehend the full import of the legislative purpose in passing them. In speaking of that case the Supreme Court, Appellate Division, First Department, said (page 681):

"We do not consider the remarks of the learned judge, above quoted, as being an exhaustive or exclusive definition of the term 'practice of medicine.'"

And on page 680, that court says, in a passage which we have before quoted:

"To confine the definition of the words 'practice of medicine' to the mere administration of drugs or the use of surgical instruments would be to eliminate the very cornerstone of successful medical practice, namely, the diagnosis. It would rule out of the profession those great physicians whose work is confined to consultation, the diagnosticians, who leave to others

> the details of practice. * * * The correct determination of what the trouble is must be the first step for the cure thereof. * * * It may be difficult by a precise definition to draw the line where nursing ends and the practice of medicine begins, and the court should not attempt, in construing this statute, to lay down in any case a hard and fast rule upon the subject, as the courts have never undertaken to mark the limits of the police power of the state, or to have precisely defined what constitutes fraud. What the courts have done is to say that given legislation was or was not within the limits of the police power, or that certain actions were or were not fraudulent."

This case, it will be remembered from our former reference to it, is the one in which the defendant practiced "mechano-neural therapy," or mechanical nerve treatment, by means of manipulating various parts of the body, but principally *the spine*, with the ends of the fingers, "a touching sensation, nothing like kneading"; the theory of the system being that disease was caused by lack of blood circulation.

After citing in its opinion most of the cases, both favorable and opposed to its views, the New York court concludes:

> "We are of the opinion, from the general current of the authorities throughout the country, and from examination of the history and growth of our own public health statutes, that we should not apply the rule as claimed to have been laid down in Smith v. Lane. When we find, as in this case, a defendant holding himself out by sign and card as a doctor, with office hours, who talks of his patients and gives treatments, who makes a diagnosis and prescribes diet and conduct and remedies, simple though they be, and *who asserts the power to cure all diseases that any physician can cure without drugs, and also diseases that they cannot cure with drugs*, and who takes payment for a consultation wherein there was an examination and determination of the trouble, that is, a diagnosis, as well as payment for subsequent treatment, even if no drugs are administered, we must hold that he comes within the purview of the statute prohibiting the practice of medicine without being lawfully authorized and registered."

The case of *Bandel* v. *Dept. of Health of City of New York* (1908), 193 N. Y., 133; 85 N. E., 1067, decided by the highest court in New York, strengthens the New York decisions as authorities in our favor. That case arose on an application by an osteopath for a peremptory writ of mandamus against the department of health of the City of New York to compel his registration as a *physician*. The Sanitary Code of the city required "every physi-

cian" to register his name with the department of health; it provided that "no interment of the dead body of any human being" should be made without a permit from the board of health; and it further provided that "*physicians* who have attended deceased persons in their last illness shall make and preserve a registry of such death," etc. It appeared that no permit to bury a body would be issued except upon presentation of the certificate and record of death made by a *physician* pursuant to the Sanitary Code.

Bandel had been denied registration as a *physician*, and the effect of such denial was that, as he could not obtain a burial permit, the body of a person who died while under his care could not be buried until after a coroner's inquest.

The Court of Appeals in affirming the order granting a peremptory writ held that, reading the city Sanitary Code and the state medical registration law of 1907 together, it was "manifest that a duly licensed osteopath is a physician within the meaning of both." That medical act provided that persons practicing osteopathy should be licensed to practice *osteopathy*. But it provided further that "a license to practice osteopathy shall *not* permit the holder thereof to administer *drugs* or perform surgery with the use of *instruments*." Yet under the statute the court held that an osteopath "practiced medicine"; therefore, he was a "physician"; and, therefore, he was entitled to registration by the city department of health. Thus it is plain that this decision adds one more stone to the foundation of liberal statutory construction on which our contentions rest. It is true that the New York act of 1907 construed in the *Bandel* case, declares very briefly what it means by "to practice medicine"; but examination will show that this definition does not add to nor subtract from the words one shade of meaning that they did not already, naturally and without express statutory definition, bear.

We have already had occasion to refer to the decisions on this subject in Iowa, and will only briefly call attention to them again. In *State* v. *Heath* (1904), 125 Iowa, 585; 101 N. W., 429, defendant had been convicted of practicing medicine without a certificate. He had advertised: "Cancer Specialist and Magnetic Treatments," with a long list of diseases he "cured." His method was "magnetic treatment," but he had not in fact treated any person in the county as a doctor or physician or osteopath, and had not received any fee for future treatments. It was admitted, however, that he expected to charge fees for treatments, should he

have any patients; and, on the other hand, that he did not pretend to use any medicines or drugs, or resort to any form of surgery. The trial court directed a verdict of acquittal, and entered judgment. On appeal by the state, the judgment was reversed by the Supreme Court of Iowa, on the ground, chiefly, that he had "publicly professed to cure or heal." In its discussion of the validity and construction of the medical act the Supreme Court says (page 431, 101 N. W.):

> "The statutes do not attempt to discriminate between different schools of medicine or systems for the cure of disease. No method of attempting to heal the sick, however occult, is prohibited. All that the law exacts is that, whatever the system, the practitioner shall be possessed of a certificate from the State Board of Medical Examiners, and shall exercise such reasonable skill and care as are usually possessed by practitioners in good standing of that system in the vicinity where they practice. *This excludes no one from the profession, but requires all to attain reasonable proficiency in certain subjects essential to the appreciation of physical conditions to be affected by treatment.* The object is not to make any particular mode of effecting a cure unlawful, but simply to protect the community from the evils of empiricism. Often the individual alone suffers from the want of proper attention, *but in cases of contagious or infectious diseases the entire community may be endangered.* In no profession, occupation, or calling are the people more easily or readily imposed on."

And the opinion concludes (*ibid.*):

> "In the instant case it conclusively appears that the accused professed publicly to heal a great variety of ailments, and so did for the purpose of procuring patients and treating them. The question of his guilt should have been submitted to the jury."

State v. *Edmunds* (1904), 127 Iowa, 333; 101 N. W., 431, was decided at the same term of court. Defendant was indicted for practicing medicine as an itinerant physician without a license. His demurrer to the indictment was sustained; but on appeal by the state, the Supreme Court held this to be error. The indictment charged that defendant attempted "to heal and cure diseases by dieting his patients, and causing them to take certain exercises and to wear certain glasses furnished by him," etc. The Supreme Court in reversing the judgment of the trial court said (page 433, 101 N. W.):

> "To save its people from quacks and charlatans, the state has plenary power to prohibit or supervise the exercise of the

> healing art. * * * Our Legislature evidently intended to prohibit the practice of the healing art by the use of medicine or any kind of appliance or methods, except upon certain named conditions."

To the same effect, see also, *State* v. *Adkins* (1910), — Iowa, —; 124 N. W., 627, and *State* v. *Wilhite* (1906), 132 Iowa, 226; 109 N. W., 730; 11 A. & E. Ann. Cas., 180.

In *State* v. *Yegge* (1905), 19 S. D., 234; 103 N. W., 17, defendant had been convicted of practicing medicine without a license. In affirming this conviction the Supreme Court of South Dakota said (page 17, 103 N. W.):

> "It is contended by the plaintiff in error that the evidence was insufficient to warrant his conviction, in that it failed to show that he was practicing or attempting to practice medicine within the provisions of the act of 1903, and that he was simply engaged in the business of fitting glasses to the eye. It was proven by the evidence of Dr. McNutt, secretary of the board of medical examiners, that no license had been granted to the plaintiff in error. The state then introduced in evidence the following notice, marked 'Exhibit 1': 'Ophthalmology. A Science for the Analysis of the Cause of Human Ills and How to Abolish Them. Everybody should know that this is a science that practices by guesses. It differentiates between functional derangements and disease. By its assistance nature cures cross-eyes, without operation; headache without drugs; hysteria without a straight jacket; female disorders without a trip to the hospital; and hundreds of nervous troubles. *Simply removing causes is the secret.* A true Ophthalmologist explains your case to you. Dr. M. F. Yegge.' * * * There was also evidence tending to prove that the plaintiff in error had a sign in front of his office with the name 'Dr. Yegge' thereon. There was also evidence tending to prove that ophthalmology is the science which treats of the physiology, anatomy, and diseases of the eye; that any deformity in the eye is considered a disease of the eye; any abnormal condition of the eye should be considered as a disease; that it is so considered by the profession; and that *the fitting of glasses* for the relief of defective eye-sight *is a branch of the practice of medicine.*"

After reviewing the evidence and quoting the statute, the court continues (page 18, 103 N. W.):

> "It will be observed that it is provided by the above section (of the statute) that: 'When a person shall append or prefix the letters M.B., or M.D., or the title Dr. or Doctor, or any other sign or appellation in a medical sense to his or her name or shall profess publicly to be a physician or surgeon, * * *

(he or she) shall be regarded as practicing within the meaning of this act.' The evidence seems to be uncontradicted that the plaintiff in error did, upon a sign in front of his office, and in the notice published, prefix to his name the letters 'Dr.,' and it is quite clear from the evidence that they were used in a medical sense, and we are of the opinion that the jury were fully justified in so regarding them."

And in conclusion the court rests its decision upon this sound canon of construction (*ibid.*):

"The law should not be so construed as to deprive the people of the benefits intended by the act, but such a construction should be given it *as to carry into effect the evident intention of the Legislature.*"

Ex parte Collins (1909), 57 Texas Crim., 2; 121 S. W., 501, was an application for a writ of habeas corpus. From an order remanding relator, he appealed; but the Court of Criminal Appeals of Texas affirmed the order. Petitioner had been arrested for practicing medicine without license; he was an osteopath. The information alleged that Collins had treated a patient for hay-fever by osteopathy, "which system consists * * * in manipulating scientifically the limbs, muscles, ligaments and bones of the human body, * * * which pressed upon the nerves of the blood supply, so that nature might have free action, the natural blood supply restored and the diseased condition thus removed." The upper court held that such treatment constituted the practice of medicine under the Texas statute.

But the relator raised the further point that the word "medicine" as used in the Texas constitution where it says that the Legislature may regulate the practice of medicine, etc., limited the power of the Legislature; and that relator did not come within the provisions of the act, because in practicing osteopathy *he used no medicine.* The court, however, refused to adopt such a narrow-gauge construction of the word, and said (page 503, 121 N. W.):

"The Constitution, when it demands the regulation of the practice of medicine, was not attempting to say that the Legislature was limited to any mode or method of healing in order to regulate it; *but the word 'medicine,'* used in the Constitution, *means the art of healing, by whatever scientific or supposedly scientific method may be used.* It means the art of preventing, curing, or alleviating diseases, and remedying, as far as possible, results of violence and accident. It further means *something* which is supposed to possess, or *some method* which is supposed to possess, curative power."

The later case of *Newman* v. *State* (1910), — Texas, —; 124 S. W., 956, re-announces the principles laid down in the *Collins* case, and also quotes with approval a long extract from the opinion in *People* v. *Allcutt* (1907), 102 N. Y. Suppl., 678; 117 App. Div., 546.

Little v. *State* (1900), 60 Neb., 749; 51 L. R. A., 717; 84 N. W., 248, is another case in which a practitioner of osteopathy was convicted of practicing medicine without a license. The Nebraska Supreme Court affirmed the judgment. Defendant's treatment consisted principally of "rubbing, pulling, and kneading with the hands and fingers certain portions of the bodies, and flexing and manipulating the limbs, of those afflicted with disease, the object of such treatment being *to remove the cause or causes of trouble.*" Defendant urged, among other things, the proposition that such treatment did not fall within the definition of a practitioner of medicine as found in the statute; the words referred to being "who shall practice medicine in any of its branches, or who shall treat or attempt to treat any sick or afflicted person by any system or method whatsoever." The court said, however, that it was "of the opinion that those who practice osteopathy for compensation come within the purview of the statute as clearly as those who practice what is known as 'Christian Science,' and therefore this case falls within the principle of *State* v. *Buswell,* 40 Neb., 158; 24 L. R. A., 68; 58 N. W., 728."

Continuing, the court said (page 719, 51 L. R. A.):

> "With the rule announced in that case we are fully satisfied, although it is possible that the decisions of some other courts are in conflict with it. The doctrine declared in that case will carry out the legislative intent, and effect the object of the statute, which is 'to protect the afflicted from the pretensions of the ignorant and avaricious * * *.' In construing statutes effect should be given to the intention of the legislature. It is argued that osteopaths do not profess to treat any physical or mental ailment, *but that they merely seek to remove the cause of such ailment or disease,* and therefore do not come within the definition mentioned. The writer is not deeply versed in the theory of the healing art, but he apprehends that all physicians have the same object in view, namely, the restoring of the patient to sound bodily or mental condition; and, *whether they profess to attack the malady or its cause, they are treating the 'ailment' as the word is popularly understood.*"

Chiropractors make the same bald assertion that they do not attempt to "cure disease," but "remove or adjust the *cause* of disease." This is nothing more than a specious jugglery of words—a mere shallow pretense that should deceive no one. Merely to say that Chiropractors *"remove causes* of disease" while other practitioners *"cure diseases"* (assuming, for the time being that *they* do not profess also to "remove causes of diseases") does not prove a difference. The test is to look at what each practitioner actually *does*, not at what he *says* he does; and it is the silliest nonsense to contend for a moment that the regular practitioners of medicine and surgery, including those who use drugs and instruments, do not try to ascertain the *cause* of each physical disturbance and then to *remove* that cause. To attempt to make a distinction on this ground is indeed to play the "mountebank" and become a mere juggler of phrases.

State v. *Buswell* (1894), 40 Neb., 158; 24 L. R. A., 68; 58 N. W., 728, is a Christian Science case, and has already been sufficiently referred to. We pass it here with the remark that it is one of the earlier cases that laid down a broad rule of construction for acts regulating the practice of medicine.

Witty v. *State* (1910), — Ind., —; 25 L. R. A. (N. S.), 1297; 90 N. E., 62, is a case in which defendant had treated a man for rheumatism or lumbago by what defendant denoted as "suggestive therapeutics"; the treatment consisted of rubbing the spine, groin, and back, and no medicine was given. The patient admitted, as a witness, that this treatment had been beneficial; yet the defendant was convicted. The conviction was affirmed by the Indiana Supreme Court, which said (page 1300, 25 L. R. A.—N. S.):

> "The mere fact alone that in his practice he did not use drugs in any form whatever as a medicine to cure or heal the many diseases which he professed to successfully treat did not place him, in the eyes of the statute within its meaning, in the position of one not engaged in the practice of medicine."

And on page 1301:

> "If he, under the facts of this case, could be held as not coming within the provisions of the statute, then any person unlicensed to practice medicine might hold himself out to the public as a doctor, and treat all classes of diseases without administration of drugs, and not offend against the statute in question. *Such a construction would be inconsistent with its letter and spirit.* The very object or purpose of the statute in question is to protect the sick and suffering and the public at large against the ignorant and unlearned * * *."

A "magnetic healer" who used no drugs was convicted, and his conviction affirmed in another Indiana case, *Parks* v. *State* (1902), 159 Ind., 211; 59 L. R. A., 190; 64 N. E., 862. The Indiana Supreme Court said (page 198, 59 L. R. A.):

> "It is our conclusion that appellant was engaged in the practice of medicine, since he held himself out as a magnetic healer, *and his method of treatment was,* at least in part, *the method that medical practitioners sometimes employ.*"

Defendant also seems to have urged that his treatment was *nursing* rather than practicing medicine; but the court was not impressed with that plea, and quoted the language of *People* v. *Gordon,* 194 Ill., 560, 571; 62 N. E., 858, 861: "Merely giving massage treatment or bathing a patient is very different from advertising one's business or calling to be that of a doctor or physician, and, as such, administering osteopathic treatment. The one properly falls within the profession of a trained nurse, while the other does not."

O'Neil v. *State* (1905), 115 Tenn., 427; 3 L. R. A. (N. S.), 762; 90 S. W., 627, has already been referred to. In that case defendant had treated patients by the application of certain rays of light and was convicted of practicing medicine without a license. The Supreme Court of Tennessee, in affirming the judgment, said (page 769, 3 L. R. A.—N. S.):

> "Surely it is not unreasonable to demand of everyone who professes to treat disease some knowledge of the disease, its origin, its anatomical and physiological features, and its causative relations, and the effects of drugs. At any rate, the state, in order to guard the people, had the right to exact such knowledge."

And it quotes (page 768, *ibid.*) with approval the language of the court in *People* v. *Phippin* (1888), 70 Mich., 6; 37 N. W., 888:

> "There is no good reason why restraint should not be placed upon the practice of medicine, as well as upon the practice of law. *The public are more concerned in this than in the practice of law, and persons who engage in this profession require a special education to qualify them to practice.* The great majority of the public know little of the anatomy of the human system, and the nature of the ills that human flesh is heir to, and there is no profession, no occupation, or calling, in which people may be more readily imposed upon by charlatans. * * *"

We will add to these cases two from Illinois: *Eastman* v. *People, for use, etc.* (1897), 71 Ill. App., 236—an osteopathy case; and

Jones v. *People, for use, etc.* (1899), 84 Ill. App., 453—another case of a "drugless" treatment by rubbing, etc. Both of these are in line with the principles enunciated in the foregoing cases. We purposely omit citing as authority *People* v. *Gordon* (1902), 194 Ill., 560; 62 N. E., 858, a later Illinois case, because the statute therein construed is, frankly, distinguishable from the Michigan Medical Act, in that it makes special provision for those "who do not use medicines internally or externally, and who do not practice operative surgery."

F. Cases Relied on for a Contrary Construction are Distinguishable

Before finally leaving this phase of our investigation and discussion, we must call attention to a case, which, with *Smith* v. *Lane* (1881), 31 N. Y. Supreme Court Reports (24 Hun.), 632, has been relied on by the opponents of our views perhaps more than any other case. That case is *State* v. *Liffring* (1899), 61 Ohio St., 39; 46 L. R. A., 334; 76 A. S. R., 358; 55 N. E., 168. We find it cited over and over, in briefs of counsel and in the opinions of those few courts which have held a different view from that here advocated, as being authority for the broad proposition that drugless systems of healing, such as osteopathy, etc., are not in the purview of statutes like the Michigan Medical Act which purport to regulate "the practice of medicine and surgery." As a matter of fact the case will sustain no such proposition. Liffring was an osteopath indicted under the then Ohio statute, and his demurrer to the indictment was sustained both in the trial court and above. The statute defined practicing medicine or surgery as to "prescribe, direct, or recommend for the use of any person, *any drug or medicine or other agency* for the treatment, cure, or relief of any wound, fracture, or bodily injury, infirmity, or disease." The indictment did not, the Supreme Court said, charge the practice of *surgery;* and the question the court had to answer was whether or not osteopathy was an *"agency"* as that word stood in the context of the statute. The court reasoned that the rule of construction, *noscitur a sociis,* applied; and that the meaning of the word "agency" must be limited by that of the associated words "drug" and "medicine." It said (page 336, 46 L. R. A.):

> "It requires the conclusion that the agency intended by the legislature is to be of the general character of a drug or medicine, and to be applied or administered, as are drugs or medicines, with a view to producing effects by virtue of its own potency."

With this reasoning we do not believe there can be any serious quarrel, though other courts might, perhaps, have construed even this statute more liberally. However, the language of the court in another part of the same opinion is really in our favor in our contention under the words of the Michigan Medical Act. It says (*ibid.*):

> "In substance, the view presented in support of the exception is that the legislature intended to prohibit the administration of any agency, and the recommendation of any mode of treating diseases or patients, except by the holders of certificates from the board. That purpose would have been unmistakably expressed in fewer words than are employed in this act. With the assumed meaning of the word 'agency,' *it would have been precisely expressed by this act if the words 'drug' and 'medicine' had been omitted.*"

But, fortunately, we need not rely entirely upon our own efforts to distinguish the *Liffring* case; for the Supreme Court of Ohio has itself done so in at least two cases: *State* v. *Gravett* (1901), 65 Ohio St., 289; 55 L. R. A., 791; 87 A. S. R., 605; 62 N. E., 325; and *State* v. *Marble* (1905), 72 Ohio St., 21; 70 L. R. A., 835; 73 N. E., 1063.

In the *Gravett* case, at the very outset the Supreme Court of Ohio differentiates the *Liffring* case on the ground that the statute had since then been changed. It says (page 793, 55 L. R. A.):

> "But since that case * * * the section has been amended, and a more comprehensive definition given of the practice regulated, so that one is now regarded as practicing medicine, within the meaning of the act, 'who shall prescribe, or who shall recommend for a fee for like use, any drug or medicine, appliance, application, operation or treatment, of whatever nature, for the cure or relief of any wound, fracture or bodily injury, infirmity, or disease.' * * * It seems quite clear that in its present form the statute affords no proper occasion for the application of the maxim of interpretation, by which we were aided in *State* v. *Liffring*. * * *. Careful comparison of the two acts with respect to their definitions of the practice regulated shows that while in the former the legislature intended to prohibit the administration of drugs by persons not informed as to their effect or potency, by the latter it has attempted *a comprehensive regulation of the healing art;* so far, at least, as to require the preparatory education of those who, for compensation practice it according to *any* of its theories. The comprehensive language of the statute, and the purpose which it clearly indicates, require the conclusion that osteopathy is within the practice so regulated."

These propositions the court lays down unequivocally and as part of its decision. On account of a defect amounting to a discrimination in another provision of the statute, they were compelled to hold that part of the act unenforcible. The parts of the opinion we have quoted, however, stand as the judgment of the court on the points covered therein.

State v. *Marble, supra,* affirmed a judgment of the trial court convicting defendant, who had given Christian Science treatments for a fee, of practicing medicine without a license. The Supreme Court of Ohio says (page 837, 70 L. R. A.):

> "It is contended that the word 'treatment' is to be given its meaning as used in the practice of medicine, and that, as so read, it means the application of remedies to the curing of disease; that a remedy is a medicine, or application, or process; that process is an action or operation; and that prayer for the recovery of the sick is neither. Technically, this may be correct; *but the science of medicine has made some advance* since the time Macbeth wished to throw physic to the dogs because his doctor could not cure a mind diseased, but told him, 'Therein the patient must minister to himself.' Nowadays doctors cure imaginary diseases by means that would as easily as Christian Science escape the above definition."

And as to the subjects prescribed for examination by the statute, the court says (page 841, 70 L. R. A.):

> "To admit that a practitioner may determine what treatment he will give for the cure of disease, and that the state may examine him only respecting such treatment, would be to defeat the purpose of the statute, and to make effective legislation of this character impossible. If the recent statute is too comprehensive, the remedy is with the legislature."

There are two other cases, frequently cited against our contentions, which must be grouped with *State* v. *Liffring, supra,* as they construe language almost identical. These cases are *State* v. *Herring* (1904), 70 N. J. Law, 56; Atl., 670, and *Hayden* v. *State* (1902), 81 Miss., 291; 33 S., 653; 95 A. S. R., 471. For the reasons above given in connection with the *Liffring* case, we do not regard them in any sense as authorities against us.

G. The Word "Surgery" Strengthens Our Contention

The foregoing are by no means all the cases that we might quote as supporting our views. We believe, however, that they are the leading ones, and are sufficient to sustain our contention that Chiropractic is comprehended within the terms "practice of medicine or surgery" and "practice of medicine and surgery in any of

its branches," as those terms are used in the Michigan Medical Act. Of course, the statutes under which the cases arose differ from the Michigan Act and from each other in some particulars; but we believe firmly that these differences are in non-essential points. In fact, many of those statutes do not add to the words "practice of medicine" the words "or surgery"; and for this reason the Michigan Medical Act uses language that would naturally include some systems of treatment that might not be held to come under "practice of medicine." In addition to our argument on the construction of the words "practice of medicine," we make the contention that, under the definitions of "surgery" that we have gathered near the beginning of this discussion, Chiropractic may fairly and without violence to spirit or letter of the statute be included as a branch of surgery. For *Webster* defines surgery as the "art or practice of healing by manual operation"; the *Standard Dictionary,* as "the branch of the healing art that relates to external injuries, deformities and other morbid conditions to be remedied directly by manual operations or instrumental appliances"; the *Century Dictionary,* as "therapy of a distinctly operative kind"; and *Gould* says of it, "Instrumental and manual operative work is still the chief idea, and, so far as it is related to diseases commonly or possibly requiring operative procedure, surgery usually includes the treatment of systemic abnormalities." See also the opinion of Shaw, C. J., in *Hewitt* v. *Charier* (1835), 33 Mass. (16 Pickering), 353, which has been discussed by us above.

And while, on the other hand, the application of the words "practice of medicine" may, in some of the statutes of other states, be made somewhat more definite by the addition in those statutes of declarations of what that term shall include; yet examination will show that these definitions were added only as additional precautions that the legislative purpose might not be misunderstood, and that the bare term itself, as commonly understood, included all the specific acts which these statutes enumerate. In other words, these definitions are generally only declaratory and do not change, either by addition or subtraction, the plain meaning of the term "practice of medicine" itself. Furthermore, it must not be overlooked that what some of these statutes may gain in certainty by defining this term is more than off-set and equaled in the Michigan Medical Act by the addition of the words *"or surgery"* in one place, of the words *"and surgery in any of its branches"* in another place. And, just as authorities do not confine the meaning of

the words "practice of medicine" to healing by means of *drugs,* neither do they limit the meaning of the words "practice of surgery" or "practice of surgery in any of its branches" to practicing the operative branch of the healing art by means of *instruments,* These additional words make it plain, if doubt could otherwise have arisen, that the purpose of the Michigan legislature was to cover in its regulation the entire field of the healing art irrespective of schools and methods, with the exception only of those portions of the field which it expressly excepted.

Practitioners of Chiropractic cannot be heard to complain if they are held amenable to the Medical Act. Assuming that their system has some merit, they have not contented themselves with modest claims that in some cases Chiropractic may give relief, etc.; they have not chosen to class themselves (as some of the defendants in the above cases have attempted to do when prosecuted for practicing medicine without a license) with nurses and masseurs. On the contrary, what they *have* done is to hold themselves out boldly to the world as able to "remove the causes" of *all* diseases from apoplexy to whooping-cough. We are willing to leave it to impartial minds to determine if giving their treatments for reward under such circumstances does not amount to the "practice of medicine and surgery in any of its branches" under the Medical Act.

Whether or not Chiropractic comes under any of the exceptions contained in Section 8 of the Medical Act, or under the Osteopathy Act, will be the subject of the next heading of this discussion.

III.

CHIROPRACTIC IS NOT TAKEN OUT OF THE OPERATION OF THE MICHIGAN MEDICAL ACT BY ANY OF THE EXCEPTIONS CONTAINED IN SECTION 8; NOR, MORE PARTICULARLY, BY THE EXCEPTION IN FAVOR OF THOSE "ENGAGED IN THE PRACTICE OF OSTEOPATHY"

NEITHER IS CHIROPRACTIC SUBJECT TO THE MICHIGAN OSTEOPATHY ACT AND IN THAT WAY TAKEN OUT FROM THE SCOPE OF THE MICHIGAN MEDICAL ACT

Section 8 of the Michigan Medical Act provides that the act shall not apply to:

1. Commissioned surgeons of the United States Army, navy or marine-hospital service in actual performance of their official duties;

2. Regularly licensed physicians or surgeons from out of the State, in actual consultation with physicians of the State;

3. Dentists in the legitimate practice of their profession;

4. Temporary assistants in cases of emergency;

5. The domestic administration of family medicines;

6. Any legally qualified osteopath engaged in the practice of osteopathy under the provisions of act number 78 of the public acts of the State of Michigan of 1897, regulating and licensing the practice of osteopathy in the State of Michigan.

Obviously Chiropractic could not come under the first five exceptions; therefore, if it is taken from the scope of the Medical Act at all by these exceptions it must be by virtue of the sixth.

The original Osteopathy Act, Act No. 78, Public Acts of 1897, has been repealed by the present act, Act No. 162, Public Acts of 1903. What the force of the sixth exception above would have been, had Act No. 78 of 1897 been repealed and no other statute been enacted as a substitute, is a question which need not be considered here. Act No. 162 of 1903 has superseded the earlier statute; and by the force of the act of 1903 itself, even in the absence of an express exception in the Medical Act in favor of osteopaths, practitioners of osteopathy would not be subject to the Medical Act. This is evident, we take it, from the language of the Osteopathy Act of 1903 which expressly provides for such an interpretation of the two acts.

Our question here then is principally, whether or not Chiropractic comes within the purview of the Osteopathy Act. If it does, then even though the Medical Act would otherwise have included Chiropractic, as we think we have succeeded in showing, its being subject to the Osteopathy Act would make it immune from the provisions of the Medical Act. On the other hand, if it appears that the Osteopathy Act does *not* apply to it, Chiropractic would be left subject to the provisions of the Medical Act.

Our contention is that Chiropractic is not subject to the Osteopathy Act, and, hence, remains subject to the Medical Act, for these reasons:

The words "practice of medicine and surgery" have in the course of twenty-five centuries come to have the broad meaning which we have attempted above to explain and illustrate. These words used in the original Medical Act of 1883, together with the comprehensive title, "An act to promote public health," indicated the intention of the legislature to include in its regulation by means of that act the whole field of the healing art—the entire science of

preventing, alleviating, and curing disease, injuries, abnormalities, etc., by every and any method or means of treatment. That act was superseded by the present Medical Act, that of 1899, which used substantially the same language in its provisions, but which also declared that it should not apply to legally qualified osteopaths under the Osteopathy Act of 1897. This exception in favor of practitioners of osteopathy appearing in a statute which, in furtherance of its general beneficial purpose, should be given and has received a *liberal* construction, must itself receive a *restricted* construction. (2 Sutherland's Statutes and Statutory Construction, 2nd Ed. by Lewis, 352.)

Likewise, in construing the Osteopathy Act now in force, we find no evidence of any intention on the part of the legislature to make the application of the act broad enough to include other systems than that specifically named therein. Osteopathy is of recent origin, the first school having been chartered, we believe, about 1894; and on account of this short life the term "osteopathy" means now and meant in 1903, when the act was passed, one specific, definitely known system and theory of treatment; consequently the legislature must be held to have had reference to that one system called "osteopathy" and not to other systems as well. At the time the act was passed various drugless systems of healing other than osteopathy, consisting of manipulation and manual "adjustments," such as "magnetic healing," "mechano-neural therapeutics" and even Chiropractic itself had been "invented" and propagated. Yet nowhere in the Osteopathy Act is there the slightest hint that the legislature intended these systems or any of them to be included in the scope of that act. If such had been the legislative intention it would not have used merely this one word, of so recent origin that it was understood at that time to refer to but one certain theory and practice of healing. This one theory and practice, osteopathy, had arisen only a few years before 1897 (the date of the original Michigan Osteopathy Act); had grown and finally developed into a system which, within its narrow sphere was believed to have some merit—sufficient, at least, to make the legislature in 1897 feel that it was entitled to recognition; albeit that recognition was restricted to a license to practice that small part of the healing art, and no other, which fell within the limited scope of the new system.

We take it to be plain that the purpose of the legislature was not to let down the bars of the fence it had erected around the

wide field of the general practice of medicine and surgery in its broad sense (including, until then, the entire healing art)—the fence it had erected by means of the Medical Act of 1883, and later replaced by that of 1899. The purpose of the legislature was not to give free access to any and every man—who, by appropriating a few theories from osteopathy and a few from other systems, inventing a few new "movements" or "adjustments," and devising a few new-sounding phrases, should choose to start a new "system" or "science" of healing—to practice, unlicensed, the healing art or any branch of it. The purpose was, we maintain, to recognize this *one* school or system which, after a struggle, had claimed the attention of the legislature. And the purpose was to leave the rest of the healing art exactly where it had been before—amenable to the operation of the *Medical* Act.

During the same years that osteopathy was asking for legislative recognition other systems and theories of healing were likewise announced to the public and practiced to a greater or less extent. But of them all, it is evident from the Osteopathy Act that only osteopathy had given sufficient promise and proof of merit to justify special legislative recognition. We base this statement, in part, on the fact that in the Osteopathy Act of 1903 no other system is expressly mentioned and no general words are added to the word *"osteopathy"* anywhere in the statute. Had the purpose been to include in the Osteopathy Act other systems—even those of a somewhat similar nature—the legislature would have added the words "or other system of manipulation or manual adjustment"; or the words "or other systems in which drugs and medicinal substances are not used or applied either internally or externally." It is impossible to enlarge the meaning of the new word *"osteopathy"* as used in the Osteopathy Act to refer to anything except the then recently-formulated science known as *"osteopathy."* And yet we find only this one word used in the act without the addition of general words of any kind.

The title is "An Act to regulate the practice of *Osteopathy,* * * * to provide for the * * * registration of *osteopathic* practitioners * * *." *Section 1* provides for the appointment of a "State Board of *Osteopathic* Registration and Examination," each member of which must be "a graduate of a reputable school of *osteopathy,*" and show that he has been "engaged in the practice of *osteopathy*" in the state for two years or more. *Section 2* provides that any person "before engaging in the practice of *osteopathy*"

shall apply to the Board for a "certificate to practice *osteopathy*"; and further that any person "engaged in the practice of *osteopathy*" in the state at the time of passage of the act, who "holds a diploma from a regular college of *osteopathy*" shall receive a certificate, which, when filed, shall entitle the holder "to practice *osteopathy*," but *not* to practice medicine within the meaning of the Medical Act. *Section 4* provides that the certificate of registration shall entitle the holder "to practice *osteopathy*," but not to practice medicine and surgery within the meaning of the Medical Act; and further that "*osteopathic* practitioners" shall be subject to regulations as to contagious diseases, etc. *Section 6* provides that any person "who shall practice or attempt to practice, or use the science or system of *osteopathy*," or who shall fraudulently obtain any certificate, etc., "to practice *osteopathy*," or who shall "practice *osteopathy*" under cover of any diploma, etc.; "or who shall use any of the forms of letters, *'Osteopath,' 'Osteopathist,' 'Osteopathy,' 'Osteopathic Practitioner,' 'Doctor of Osteopathy,'* 'Diplomate in *Osteopathy,' 'D.O.'* or any other titles" so as to induce the belief that he is "engaged in the practice of *osteopathy*," shall be deemed guilty, etc. *Section 7* takes *osteopathy* out of the scope of the Medical Act and provides further that the Osteopathy Act shall not apply to legally qualified practitioners of medicine and surgery under the Medical Act, nor "to masseurs or nurses practicing massage or manual Swedish movements."

One offense against the act, it will be seen from *Section 6*, is the deception of persons into believing that a practitioner is an osteopath when in fact he is not. But another offense is to "practice or attempt to practice, or use the science or system of *osteopathy* in treating diseases of the human body" without complying with the act. Now, we believe that if a man practiced or used the system of *osteopathy* exactly as taught and practiced by the most orthodox osteopath, he would be amenable to the Osteopathy Act, even though he *called* his system by some other name. Therefore, the mere fact that Chiropractic has a different name, would not necessarily keep it out of the operation of the Osteopathy Act.

But if, as a matter of fact, Chiropractic differs from osteopathy not only in name, but also in substance, practice, and theory to any appreciable extent, then we say that Chiropractic does not become answerable to the Osteopathy Act, but remains subject to the Medical Act.

To settle the question of fact we must refer to our "Statement of Facts." Here we find both Chiropractors and Osteopaths uniting in the common cry that osteopathy and Chiropractic are separated by a gulf as wide as the Atlantic. Since the Chiropractors so positively say they are *not practicing osteopathy* they should not be heard to claim that they nevertheless come under the regulation of the Osteopathy Act, and therefore are not subject to the Medical Act.

Irrespective, however, of their own bare statement, we believe a comparison of the two systems will show that they are not by any means the same. Chiropractors confine their entire practice to the spinal column, while osteopathic treatment is given to all parts of the body; this itself is a fundamental, a basic difference. Chiropractic treatment consists of "adjusting" or re-aligning a "subluxation" or dislocation of vertebræ, while osteopathic treatment flexes and pulls muscles, rubs, kneads and presses portions of the body; here again is a fundamental difference both in theory and practice. Again, Chiropractic "adjustments" are the work of a few minutes, whereas osteopathic treatment for the same ailment requires much longer.

These differences are some of those which even a layman, not learned in the science of healing, may detect; no doubt an expert in that science could point out others. These, however, are sufficient to prove our point that Chiropractic is not included within the restricted meaning which must be given to the word "osteopathy" as used in the Osteopathy Act.

Our conclusion is that Chiropractic, not being amenable to the Osteopathy Act, is left subject to the Medical Act; and that its practitioners are liable to prosecution under the Medical Act for failure to comply with its provisions.

LOESCH, SCOFIELD & LOESCH,

Counsel for American Medical Association.

Chicago, January, 1911.