

Osteopath.- Right to practice osteopathy within the terms
of the Workmen's Compensation law.

✓ Loc 13514 - 3311 KS Mo 1939

August
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Hon. H. J. Boyle,
Presiding Judge of the County Court,
Buchanan County,
St. Joseph, Missouri.

Dear Mr. Boyle:

We hereby acknowledge your request for an opinion.
The pertinent part of your letter was as follows:

"At the request of part of my constituency here
in Buchanan County, I, as Presiding Judge of the
County Court desire an interpretation of Section
3311 of the Missouri Workmen's Compensation Law,
which reads as follows:"

(Omitted, as it appears later in opinion).

Trusting I may receive your interpretation at
an early date, whether or not one licensed to
practice osteopathy in Mo. is a physician with-
in the meaning of the above law?"

Section 13514, R. S. Mo. 1929, provides as follows:

"The system, method or science of treating diseases of the human body, commonly known as osteopathy, and as taught and practiced by the American School of Osteopathy of Kirkeville, Missouri, is hereby declared not to be the practice of medicine and surgery within the meaning of Article 1 of Chapter 53, and not subject to the provisions of said article."

Our Supreme Court in discussing the above section of law, together with all the other sections found in Chapter 102, R. S. Mo. 1929, entitled "STATE BOARD OF OSTEOPATHIC REGISTRATION AND EXAMINATION" in the case of Atkinson v. School, 240 Mo. 338, l.c. 353, 144 S.W. 816, said:

"Our statute, already referred to (R.S. 1899, Section 8537-8539, now Chapter 102 R.S.No. 1929), expressly recognizes osteopathy a system, method or science of treating diseases of the human body, and the defendant's school as the exponent of its method and practice. It also expressly authorizes persons having diplomas from that or any other legally chartered or conducted school of osteopathy to treat diseases of the human body, according to such method. In so doing, it necessarily permits and authorizes persons to contract for such treatment. It is true that Section 8537 (now 13514) provides that osteopathy is 'not to be the practice of medicine and surgery within the meaning of article one of this chapter) now Chapter 53, and not subject to the provisions of said article;' but the purpose so expressed is simply to segregate this particular system from those for which the regulation of which article one was enacted. All these systems, methods or sciences are directed to the treating of diseases of the human body, and each stands upon the merits of its own system."

Thus we see that our Supreme Court in discussing the provisions of the above section, together with all other sections found in Chapter 102 R. S. No. 1929, touching upon osteopathy, held, by way of dictum, that osteopathy in Missouri is one of several methods of sciences directed to the treating of diseases of the human body, and like other systems directed to the same objective, osteopathy stands upon the merits of its own system. I find no decisions in the appellate courts of this state touching squarely on your question, but in many states of the Union, and by the federal government, I find that osteopaths are recognized as physicians, either by statute or by the courts taking judicial knowledge. In the above case our supreme court did not so declare them to be physicians, in so many words, but they did say that a practicing osteopath is permitted and authorized in Missouri to contract for the treatment of the diseases of the human body, according to their method. I do not find the terms osteopath or physician defined in the statutes of this state. Noah Webster defines the term "physician" thus:

"A person skilled in physic or the art of healing."

Section 3311, R. S. No. 1929, of the Workmen's Compensation Act, provides in part as follows:

"In addition to all other compensation, the employee shall receive, and the employer shall provide, such medical, surgical and hospital treatment, including nursing, ambulance and medicines, as may reasonably

be required for the first sixty days after the injury or disability, to cure and relieve from the effects of the injury, not exceeding in amount the sum of Two Hundred Fifty Dollars (\$250.), and thereafter, such additional similar treatment within one year from the date of the injury as the Commission, by special order, may determine to be necessary. If the employee desires, he shall have the right to select his own physician, surgeon, or other such requirement at his own expense. Where such requirements are furnished by the public hospital or other institution, payment therefor shall be made to the proper authorities.

If it be shown to the Commission that such requirements are being furnished in such manner that there is reasonable ground for believing that the life, health or recovery of the employee is endangered thereby, the commission may order a change in the physician, surgeon, hospital or other requirement.

All fees and charges under this section shall be fair and reasonable, shall be subject to regulation by the commission, and shall be limited to such as are fair and reasonable for similar treatment of injured persons of a like standard of living. The commission shall also have jurisdiction to hear and determine all disputes as to such charges.

No compensation shall be payable for the death or disability of an employee, if and in so far as the same may be caused, continued or aggravated by an unreasonable refusal to submit to any medical or surgical treatment or operation, the risk of which is, in the opinion of the commission, inconsiderable in view of the seriousness of the injury. If the employee dies as a result of an operation made necessary by the injury, such death shall be deemed to be caused by the injury.

The testimony of any physician who treated the employee shall be admissible in evidence in any proceeding for compensation under this chapter.

Every hospital or other person furnishing the employee with medical aid shall permit its record to be copied

by and shall furnish full information to the commission, the employer, the employee or his dependents and any other party to any proceedings for compensation under this chapter, and certified copies of such records shall be admissible in evidence in any such proceeding."

Section 655, R. S. No. 1929, provides in part as follows:

"The construction of all statutes of this state shall be by the following additional rules, unless such construction be plainly repugnant to the intent of the legislature, or the context of the same statute: First, words and phrases shall be taken in their plain or ordinary and usual sense, but technical words and phrases having a peculiar and appropriate meaning in law shall be understood, according to their technical import;" * * *

In the case of Lovell v. Williams Brothers, (App.) 50 S. W. (2nd) 710, in interpreting the Workmen's Compensation law, the court said:

"The cardinal principle of the compensation act is to insure the employee against accidental injury arising out of and in the course of his employment." To this end the act should be liberally construed.

In the case of Elsas v. Montgomery Elevator Co. (App.) 50 S. W. (2nd) 130, l.c. 133, this court said:

"The language actually used (language in the Workmen's Compensation Act) is so plain as to leave no room for construction. In such case we could not read into the enactment words that are not found therein, either by express inclusion or by fair implication." (Parenthesis ours.)

The Workmen's Compensation law, provides for medical, surgical and hospital treatment, etc., and provides for a physician or surgeon, not the school to which said physician or surgeon is an exponent, it does not set out the qualifications of the physician or surgeon practicing under said act, but does provide that, at the discretion of the commission, the physician or surgeon chosen may be changed.

For the definition of the term physician or surgeon herein used, reference must necessarily be had to the other sections

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of the act, general laws, and the decisions of the courts in this state and other states.

25 R. C. L. pp. 920-970, Section 233 says:

"Since it is the duty of the courts to ascertain the meaning of the legislature from the language of the statute, general words are to have a general operation, unless the manifest intention of the legislature affords grounds for qualifying or restricting them."

U In the instant case the legislature afforded grounds for a liberal construction of the term physician by the provisions of the same act. Our courts have held that the act should be construed liberally. To construe it technically would be against the context of the statute and repugnant to the intent of the legislature which is the recognized method of statutory interpretation.

It is the opinion of this office that the provisions of Section 3311, R. S. No. 1929, while insuring the employee against accidental injury, and while using the term physician and surgeon, that said statute and related statutes do not provide an instance where any particular method or science of care or cure, from several classes of eligibles recognized in this state, is exclusively named or implied.

It is our opinion that one licensed as an osteopath in this state is permitted to treat diseases of the human body by that method, under the laws of this state, and that he is a physician within the meaning of said term as used in the Workmen's Compensation Act.

Respectfully submitted,

WM. ORR SAWYERS,
Assistant Attorney General.

APPROVED:

ROY McKITTRICK,
Attorney General.