

PHYSICIANS AND SURGEONS:

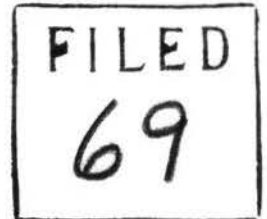
The practice of Physio-Therapy; Swedish Massage, Hydro-Therapy, Electro-Therapy and Naturopathy is a practice of medicine and surgery and within the provisions of the law requiring a license therefor.

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July 29, 1938

Filed: #69

Dr. Harry F. Parker, Secretary  
State Board of Health of Missouri,  
Jefferson City, Missouri



Dear Sir:

This is in reply to yours of July 22nd for an official opinion from this department which is as follows:

"We have had a number of inquiries relative to the laws regulating the practice of Physio-Therapy; Swedish Massage, Hydro-Therapy and Electro-Therapy and Naturopathy in the State of Missouri.

"Since we have no law regulating the practice of these branches, we are at a loss to know what to tell them. Will you kindly give me an opinion as to whether or not they would come under the Medical Practice Act of the State of Missouri. If not, will these people be permitted to practice in this state until we have a law regulating such practice."

In our research on your inquiry we find in Gould's Medical Dictionary that the practices of Physio-Therapy to be:

"The use of the forces of nature in the treatment of disease, for example,

Dr. Harry F. Parker

heat, light, electricity, exercise,  
air, water."

The Swedish Massage is a treatment by certain systematic exercises intended to exercise and develop the human body and affect function, nutrition, etc.

The practice of Hydro-Therapy is the treatment of disease by means of water; that the practice of Electro-Therapy is the science and act of the application of electricity for therapeutic purposes; that the practice of Naturopathy as defined in the case of Milsap v. Alderson, 63 Cal. App. 518, 219 Pac. 469, is the treatment of the sick and afflicted by means of light, air, water, clay, heat, rest, diet, herbs, electricity, massage, etc.

Section 9111, R. S. Mo. 1929 provides as follows:

"It shall be unlawful for any person not now a registered physician within the meaning of the law to practice medicine or surgery in any of its departments, or to profess to cure and attempt to treat the sick and others afflicted with bodily or mental infirmities, or engage in the practice of midwifery in the state of Missouri, except as herein-after provided."

Section 9112, R. S. Mo. 1929 provides as follows:

"The state board of health shall have general supervision over the registration of all practitioners of medicine, surgery and midwifery in this state."

That part of Section 9111, supra, which provides that:

"It shall be unlawful for any person not now a registered physician within the meaning of the law \* \* \* or to profess to cure and attempt to treat the sick and others afflicted with

Dr. Harry F. Parker

bodily or mental infirmities" \* \* \*

is a very broad term and was apparently intended by the lawmakers to cover any and all forms of treatments by anyone who professed to cure or attempted to cure the sick.

In the case of *Kansas City v. Baird*, 92 Mo. App. 204, l.c. 208, the court, in discussing the statute relating to medicine and surgery which statute is now Section 9111, supra, said:

" \* \* \* The words 'medicine and surgery' and 'practicing medicine and surgery,' being in a penal statute, must be taken to have a meaning in their ordinary sense. Medicine, in its ordinary sense, as applied to human ailments, means something which is administered, either internally or externally, in the treatment of disease, or the relief of sickness. It may be applied externally and it need not necessarily be a substance which may be seen and handled. It may consist of electricity conveyed by instruments or the human hand. And he whose profession it is to prescribe and administer this, after diagnosing the complaint, is a physician as commonly and ordinarily understood. Thus the statute will include what is known as 'a medical clairvoyant' who visits sick patients, examines their condition, determines the nature of the disease and prescribes the remedies deemed most appropriate. *Bibber v. Simpson*, 59 Maine 181; *Wilson v. Harrington*, 72 Wis. 591. And so one is practicing surgery who professes and practices bone-setting in dislocations and fractures, reducing sprains, swellings and contraction of

Dr. Harry F. Parker

the sinews by friction and fomentation.  
Hewitt v. Charier, 16 Pick. 353."

In the case of State v. Davis, 194 Mo. 485, l.c. 497, in discussing what may be termed the practice of medicine under the Missouri statute, the court said:

"The practice of medicine as contemplated by the provisions of the statute covering that subject, may consist only of the examination of a patient, diagnosing the cause of the trouble complained of, or by one professing to be a physician seeing the patient at stated intervals, and the indication and prescribing of remedies to be applied, and the acceptance of pay for such services. \* \* \*"

Section 23, page 1076, Volume 48 Corpus Juris, lays down the rule of what constitutes a practice of medicine as it applies to massages:

"A masseur without a license or certificate to practice medicine does not violate the statutes requiring such a license or certificate where he confines himself to the particular sphere of labor of a masseur and merely massages other persons without reference to any pains or diseases which such persons may profess to have; but the rule is otherwise where he undertakes to treat diseases for pay, and in doing so uses means not customarily used by a masseur in his particular sphere of labor."

In the case of State v. Smith, 233 Mo. 242, 260, the Supreme Court of Missouri defined the practice of medicine as follows:

" \* \* \* The practice of medicine is not confined to the administration of drugs;

Dr. Harry F. Parker

nor is surgery limited to the knife. When a physician advises his patient to travel for his health, he is practicing medicine. \* \* \* "

In the same case at l.c. 257 the court, in discussing the intention of the lawmakers when this legislation was enacted, said:

"It is obvious that the Legislature, by this amendment, intended to include those who practice neither medicine nor surgery in any of its departments, but who profess to cure, and who treat or attempt to treat, the sick by means other than medicine or surgery. Evidently the Legislature, in order to guard the overcredulous against injury that might result from yielding to the solicitations and professions of men who ignorantly undertake to diagnose and treat human ailments, deemed it proper, in the exercise of its police power, to require all persons, who undertake to so treat the sick, to show that they possess the qualifications which the lawmakers prescribe as essential."

If such persons hold themselves out as being able to cure the patient of the illness they are practicing medicine and surgery within the meaning of the act. Volume 48 Corpus Juris, page 1077, section 24, provides as follows:

"In many states there are statutes which, although varying considerably in phraseology, are to the same general effect that a person shall be regarded as practicing medicine, within the meaning of a provision requiring a license or certificate, where he holds himself out as a physician, or publicly professes to treat, cure, or heal, either generally or by certain designated means, such as by advertisement or other public announcement, opening an office for the practice of medicine, or

Dr. Harry F. Parker

using, in connection with his name, the title 'Doctor,' 'Dr.,' or 'M.D.,' or any other word or abbreviation indicating that he is engaged in treating human ailments or diseases; and a person performing acts within such statutes is of course amenable thereto. The statutes apply to advertising or professing to treat, cure, or heal without drugs, medicines, or surgery and, except in some jurisdictions, to the use of the word 'doctor' or 'physician' in connection with some qualifying word, as 'osteopathic,' 'magnetic,' or 'drugless.' While actual treatment or practice is not necessary to bring a case within the statutes under consideration, a public profession of an ability to heal will not subject a person to the penalties of the law, unless it is made with a view of undertaking to cure the afflicted. In the absence of a statute on this subject, a statute merely prohibiting the practice of medicine by any person not qualified and licensed will not prohibit the assumption of the title 'Doctor' by any person whatever his profession."

And in Volume 21, R. C. L., page 373, section 20 states the rule as follows:

" \* \* \* One who advertises himself as a doctor or healer and is in fact engaged in curing by means of suggestive therapeutics or by magnetic methods is engaged in the practice of medicine within the meaning of a statute which prohibits the same without the possession of a license."

A person who advertised himself as a 'suggestionist' and treated the sick was held to be practicing medicine

Dr. Harry F. Parker

in violation of the statute in the case of State v. Evertz, 202 S.W. 616, 617, wherein the court said:

"Neither is there any merit in the contention that the court below should have sustained appellant's demurrer to the evidence. It was shown by abundant evidence: That defendant held himself out as being authorized to treat the sick, or those afflicted with bodily or mental infirmities. That he maintained an office, near the entrance to which was a large sign in the following language, viz.: 'Evertz School of Suggestion, Oscar Evertz, S.D. Suggestionist. Treatment. Instruction.' That he circulated advertising matter concerning his method of treatment which is said to have been that of 'auto-suggestion,' and that he offered to treat the witness, Leonor Howes, in consideration of the sum of \$45 to be paid him in advance. And it is conceded that he was not a licensed physician. It cannot be doubted that a violation of the statute was shown."

In the case of State v. Stoddard, 86 A. L. R. at page 617 upon what constitutes a practice of medicine the rule is as follows:

"A treatment of human beings by another person for the purpose of relieving an ailment, with a public profession on the alleged doctor's part of the ability to cure and heal, amounts to the practice of medicine."

From the definitions of the various forms of practice mentioned in your letter, it appears that those who are practicing such callings may not be practicing medicine or surgery in any manner but that they are treating or attempting to treat the sick by means other than medicine

Dr. Harry F. Parker

or surgery which would bring them within the provisions of the Missouri law and as stated in the case of State v. Smith, supra, such acts do come within the provisions of the Missouri law.

#### CONCLUSION

From the foregoing authorities this department is of the opinion that any person who advertises or holds himself out as a practitioner of Physio-Therapy, Swedish Massage, Hydro-Therapy and Electro-Therapy and Naturopathy who examines his patients and/or prescribes such treatment to those who come to him and give such treatment making a charge therefor is practicing medicine and surgery within the meaning of the Missouri law relating to the practice of medicine and surgery and such parties are required to and should have a license therefor from the State Board of Health.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. W. BUFFINGTON  
(Acting) Attorney General