

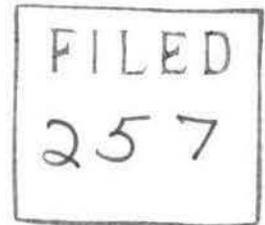
PATHOLOGY:
PHYSICIANS AND SURGEONS:
DOCTORS:

Pathology is a branch of the practice of medicine within the provisions of Chapter 334, RSMo, and a profession under the jurisdiction of the State Board of Registration for the Healing Arts, and that an individual must be licensed by the Board before he can lawfully practice pathology. The prosecuting and circuit attorneys have the responsibility for criminal prosecutions arising out of violations of said chapter.

OPINION NO. 257

June 1, 1970

Honorable P. Wayne Goode
State Representative
7400 North Broadway
St. Louis, Missouri 63147



Dear Representative Goode:

This opinion is in response to your letter in which you inquire as follows:

- "1. What are the qualifications necessary for an individual to practice pathology in the State of Missouri.
- "2. If an individual may practice pathology with a 'temporary license for training,' can he do so outside of the institution in which he is training.
- "3. What agency or agencies are responsible to enforce the law as it applies to the above, and what is the responsibility of local law enforcement agencies, County Prosecuting Attorney, the Board of Registration for the Healing Arts, and the office of Attorney General in this enforcement."

We first of all wish to note that Section 334.010, RSMo 1969, with respect to physicians and surgeons states 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

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afflicted with bodily or mental infirmities, or engage in the practice of midwifery in this state, except as herein provided."

While the legislature in enacting the above section obviously did not attempt to designate the various branches of medicine or surgery, the intent is clear that in order to protect the public the terminology used should be given a broad construction.

Ballentine's Law Dictionary, Second Edition (1948), p. 942, defines pathology as follows:

"That part of the science of medicine which explains the nature of diseases, their causes and symptoms. A pathological condition means neither more nor less than a diseased condition of the body."

70 C.J.S., Physicians and Surgeons, §1, p. 813, defines pathology as:

"That part of medicine which explains the nature of diseases and their causes and symptoms; the science treating of diseases, their nature, causes, progress, manifestations and results."

And, in the footnote from the same citation, the definition of pathology is given as:

"The science treating of diseases, their essential nature, causes, and development, and the structural and functional changes produced by them. Stroud v. Crow, 136 S.W.2d 1025, 1027, 199 Ark. 814."

Likewise, from the same C.J.S. citation, "pathological training involves the study of chemicals and the reaction of different chemicals when put together, gasses, etc."

The Encyclopedia Britannica, 14th Edition, Volume 17, p. 376, states that pathology includes:

"Almost anything which has to do with disease, and its field including aetiology, pathogenesis, morbid anatomy, microscopic histology, parasitology, functional changes, chemical alterations, and indeed any topic, except diagnosis and treatment which was open to fairly accurate study."

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And, as described in the Columbia Encyclopedia, Third Edition, p. 1611, pathology is the:

"Study of modifications in function and changes in structure produced in any organ or part of the body by disease. The changes in tissue include degeneration, atrophy, hypertrophy, and inflammation."

We understand that pathologists jointly participate with the patient's attending physician in evaluating what diagnosis the laboratory data suggest or exclude and how the data may be used in deciding what therapy may be best for the patient. The pathologist supervises the performance of various laboratory tests, maintains surveillance as well as quality control, and takes the responsibility for their accuracy.

It also appears that various publications of the American Medical Association have over the last several decades contained resolutions recognizing pathology as a specialty of medicine; e.g., the May 27, 1939, Journal of the American Medical Association stated:

"Resolved, that the American Medical Association specifically recognizes the fact that clinical pathology as a specialty of medicine and believes that those persons who practice it and who act as directors of clinical laboratories must be graduates of recognized medical schools and licensed to practice medicine in their respective states; and further be it

"Resolved, that only to the nature of the subject, the American Medical Association recognizes that it is necessary for the persons to complete at least three years of adequate training in clinical pathology, in addition to the training which they have received in regular courses in medical schools, before assuming the directorship of clinical laboratories."

In 1964 the House of Delegates of the American Medical Association adopted the principles substituted by its reference committee as follows:

"The practice of anesthesiology, pathology, physical medicine and radiology are an

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integral part of the practice of medicine in the same category as the practice of surgery, internal medicine or any other designated field of medicine."

The American Medical Association has published the "Requirements for Certification, American Specialty Boards," Revised to June 30, 1969, which with respect to the American Board of Pathology states in part under "general requirements" that:

- "1. The candidate must possess moral and ethical standing in the medical profession.
- "2. The candidate must hold a license to practice medicine in the country in which he plans to reside.
- "3. The candidate must devote professional time principally and primarily to pathology."

Other references with respect to the scope of the practice of pathology include "An Introduction to Pathology" by G. Payling Wright, Professor of Pathology, Guy's Hospital Medical School, University of London; "How Does a Pathologist Make a Diagnosis?" Editorial, Arch Path - Vol. 84, October, 1967; "A Textbook of Pathology Structure and Function in Diseases" by William Boyd, 7th Edition.

In Granger v. Adson, 250 N.W. 722 (Minn. Sup. 1933), the Supreme Court of Minnesota stated at page 723:

"It is settled law in this state that:
'The science of diagnosing human diseases and human ailments has come to be a distinct branch or department of the medical profession; the diagnostician limiting his efforts to a discovery of the disease or ailment from which a patient may be suffering, its character and location, leaving the treatment thereof to some other physician or surgeon. This is a matter of common knowledge. And it requires no discussion or argument to demonstrate that the physician who thus applies his learning and energies is performing a highly important duty of the profession, and is engaged in the practice thereof, though he prescribes no drug and administers no specific treatment.' State v. Rolph, 140 Minn. 190, 167 N.W. 553, 554, L.R.A. 1918D, 1096."

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The role of the medical specialist in expert pathological testimony has been recognized in York v. Daniels, 259 S.W.2d 109 (Mo. Springfield Appeals 1953), Agnew v. City of Los Angeles, et al, 218 P.2d 66 (DC App., Calif. 1950), and Burnstein v. Alameda-Contra Costa Medical Association, 293 P.2d 862 (DC App., Calif. 1956).

The practice of pathology by corporate entities has been held to be unlawful as being the practice of medicine. Opinion by Solicitor General of the State of Iowa to Secretary of State, May 1, 1969, also decision and opinion of the District Court of the State of Iowa in and for Polk County, No. 63095 Equity Division, Iowa Hospital Association v. Iowa Board of Medical Examiners (November 28, 1955).

Likewise, in Guardian Life Insurance Co. of America v. Richardson, 129 S.W.2d 1107 (Court of Appeals, Tenn. 1939), the court stated at l.c. 1116:

"In the view we take of the insurance contract, it is necessary to ascertain whether there is material evidence reasonably tending to show that plaintiff is totally and permanently disabled by 'bodily' disease, as distinguished from mental disease; and this presents an issue involving the pathology of disease, that is, 'the science treating of diseases, their nature, cause, progress, manifestations and results'. Webster's International Dictionary. Such issues are to be determined upon the testimony of qualified medical expert witnesses. American National Insurance Co. v. Smith, 18 Tenn. App. 222, 227, 74 S.W.2d 1078; Standard Life Insurance Co. v. Strong, 19 Tenn. App. 404, 424, 87 S.W.2d 367, 380; National Life & Accident Insurance Co. v. Follett, 168 Tenn. 647, 80 S.W.2d 92. See also, numerous cases cited in Jones on Evidence (2nd Ed.), Vol. 1, page 812, Footnote 8."

Generally speaking, of course, one is practicing medicine when he visits his patient, examines him, determines the nature of the disease, and prescribes the remedy he deems appropriate, and one professing to be able to ascertain by examination of his patient the cause of his trouble, and to indicate the proper treatment is practicing medicine. State v. Smith, 233 Mo. 244, 135 S.W. 465 (1911).

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At the same time, however, it becomes clear that the practice of medicine need not contain all of the elements found to exist in State v. Smith. That is, if laymen were to individually practice segmented functions of a medical nature arriving at a collective result, they would be none the less practicing medicine. It is thus that we view the practice of pathology as containing at least one if not more of those elements required for determining whether one is practicing medicine.

It has been suggested that the courts might distinguish between cases where the "pathologist" actually sees the patient and performs some operation or test on him and cases where the pathologist merely examines the matter submitted to him by a physician and has no contact with the patient. However, it is our view, broadly speaking, that the diagnosis of pathological conditions constitutes the practice of medicine and cannot be performed by a lay person.

We are not stating that every individual who makes tests, studies or reaches findings within the area of "pathology" is practicing medicine. Obviously various technologists perform functions in the area of pathology that cannot be considered reserved to the pathologist. Whether such persons are practicing medicine must be determined by the facts of the particular case.

In answer to your second question, requirements for temporary licensure of physicians and surgeons are contained in Chapter 334 and in particular Section 334.045, RSMo 1967 Supp., which states in full as follows:

"1. Notwithstanding any other provisions of law, the board may grant a temporary license to any otherwise qualified physician to practice as a physician and surgeon in state maintained hospitals or other hospitals approved by the board, even though such person is not a citizen of the United States but is legally authorized to practice under the laws of another state, territory or foreign country and who meets such other requirements as the board may prescribe.

"2. The temporary license provided for in subsection 1 shall limit the right of the licensee to practice only in the state maintained hospitals or other hospitals approved by the board, under the supervision of the superintendent or chief of staff of such institution, and shall be renewable annually

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in the discretion and with the approval of the board, provided, however, that no fees for services rendered shall be charged by the temporary licensee nor by the hospital where he is employed for services performed by such temporary licensee. A fee in the amount of five dollars shall accompany the original application for temporary license and a similar amount shall be paid annually in the event the temporary license is renewed."

Licenses for the practice of medicine and surgery are required by Section 334.010, RSMo et seq., as amended; and we know of no "temporary license for training" other than that set out in Section 334.045, above, which is self-explanatory.

In answer to your third question, the Board of Registration for the Healing Arts is responsible for the licensing of physicians and surgeons, Chapter 334, RSMo.

The Board of Registration for the Healing Arts is a State Board, and as such is represented by the Attorney General, Chapter 27, RSMo.

The responsibility for criminal law enforcement for violations of the provisions of Chapter 334 is in the prosecuting and circuit attorneys, Chapter 56.

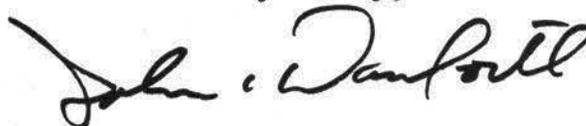
CONCLUSION

It is the opinion of this office that "pathology" is a branch of the practice of medicine within the provisions of Chapter 334, RSMo, and a profession under the jurisdiction of the State Board of Registration for the Healing Arts, and that an individual must be licensed by the Board before he can lawfully practice pathology.

The prosecuting and circuit attorneys have the responsibility for criminal prosecutions arising out of violations of said chapter.

The foregoing opinion, which I hereby approve, was prepared by my assistant John C. Klaffenbach.

Yours very truly,



JOHN C. DANFORTH
Attorney General