STATE BOARD OF HEALTH: Regulations respecting control of venereal diseases within statutory powers of Board.

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November 16, 1939

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Dr. Harry F. Parker
State Health Commissioner
Jefferson City, Missouri

Dear Dr. Parker:

We are in receipt of your letter of October 31st, together with enclosures, wherein you state as follows:

> "At a meeting of the State Board of Health on October 25, some changes were made in the Missouri Public Health Manual on the control of venereal diseases. I am enclosing these changes and will ask you to kindly furnish us with an opinion to see that the Board has kept within its powers in this matter."

Section 9016, R. S. Mo. 1929, vests the State Board of Health with authority to make and enforce adequate rules and regulations to prevent the spread of diseases in this state.

> "The board shall designate those diseases which are infectious, contagious, communicable or dangerous in their nature and shall make and enforce adequate rules, regulations and procedures to prevent the spread of those diseases and to determine the prevalence of said diseases within the state."

In accordance with such authority, the State Board of Health has adopted specific measures for the control of venereal diseases, and you now seek to make certain new regulations governing such diseases.

The first change provides that:

> "Every physician, or other person who makes a diagnosis in or treats a case of syphilis, gonorrhea or chancroid, and every superintendent or manager of a hospital, dispensary or charitable or penal institution, in which there is a case of venereal disease, shall report such case immediately in writing on forms provided by the State Board of Health to the local or district health officer stating the name or initials and address or the office number and age, sex, color and occupation of the diseased person, and the date of the onset of the disease, and probable source of infection."

Under the above section every physician, among others, who makes a diagnosis of venereal diseases must report same immediately in writing, setting out the name, address, etc., of the diseased person and the probable source of infection.

48 C. J., Section 96, p. 1111, states that:

> "While communications between a physician and his patient are ordinarily privileged, it has been held that the question whether a breach of medical confidence is actionable depends on the character of the disclosure made."

In the case of Simonsen v. Swenson, 177 N. W. (Neb.) 831, l. c. 832, the court, in recognizing that a physician treating a person suffering from a contagious or infectious disease owes the public a duty to make such disclosure as to prevent the spread of disease, said:

> "The doctor's duty does not necessarily end with the patient, for on the other hand, the malady of his patient may be such that a duty may be owing to the public and, in some cases, to other particular individuals. Recognition of that fact is given by the statutes in this state, which delegate power to the state board of health, and to municipalities generally

> to require reports of, and provide rules of quarantine for, diseases which are contagious and dangerous."

And further in the opinion the court said:

> "When a physician, in response to a duty imposed by statute, makes disclosure to public authorities of private confidences of his patient, to the extent only of what is necessary to a strict compliance with the statute on his part, and when his report is made in the manner prescribed by law, he of course has committed no breach of duty toward his patient, and has betrayed no confidence and no liability could result."

Where a regulation is designed to promote the health and welfare of the people of this state it is within the police power of the state and valid. Thus, the court, in the case of Ex Parte Lewis, 42 S. W. (2d) (Mo. in Banc) 21, said:

> "It is well settled that laws and ordinances prescribing regulations for the promotion of the health and welfare of the people are referable to the police power, and, if reasonable, are not obnoxious to the due process clause of either the state or Federal Constitution. Speaking to that question in Valley Spring Hog Ranch Co. v. Plagmann, 282 Mo. 1, 14, 220 S. W. 1, 5, 15 A. L. R. 266, we said:
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> 'The constitutional guaranties that no person shall be deprived of life, liberty, or property without due process of law, and that no state shall deny to any person within its jurisdiction the equal protection of the laws, were not intended to limit the subjects upon which the police power of a state may lawfully be exerted. Minneapolis Railway Co. v. Beckwith,

> 129 U. S. 26, 9 S. Ct. 207, 32 L. Ed. 585; Jones v. Brim, 165 U. S. 180, 17 S. Ct. 282, 41 L. Ed. 677. In Barbier v. Connolly, 113 U. S. 27, 5 S. Ct. 357, 28 L. Ed. 923, the court used this language: "But neither the amendment (Fourteenth)--broad as it is--nor any other amendment, was designed to interfere with the power of the state, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education, and good order of the people."
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> A like ruling was made in the recent case of Bellerive Inv. Co. v. Kansas City, 321 Mo. 969, 13 S. W. (2d) 628, 634, where many cases dealing with the subject are cited and discussed.
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> It appears from the provisions of the ordinance in question that it was enacted to protect and promote the health of the people, and is therefore fairly referable to the police power of the city, and for that reason is not violative of the constitutional provisions invoked."

From the foregoing, we are of the opinion that the State Board of Health, by adoption of the above rule, has kept within its statutory powers.

The second change provides that:

> "All city, county or other local Boards of Health shall use every available means to ascertain the existence of, and investigate all cases of syphilis, gonorrhea or chancroid in their jurisdiction. Such Boards are empowered and directed to make such examinations of persons reasonably suspected of having such diseases."

It is to be noted that the Boards are empowered and directed to make such examinations of persons <u>reasonably</u> suspected of having such diseases.

29 C. J., Section 44, page 254, declares that:

> "Persons infected with venereal diseases may be confined or sequestered. The detention may be justified if the person is one whose habits are such as to warrant the belief that he or she is afflicted with a venereal disease, as in the case of prostitutes. However, mere suspicion that the person is a prostitute is insufficient; such inference is not a fairly reasonable one to be deduced under proof of mere sexual acts of intercourse between unmarried persons. Ordinarily health authorities have no power to force a person, suspected of being afflicted with a venereal disease, to an examination of his body, at least where there is no cause for suspicion; nor have they power to compel the withdrawal of blood from his veins in search of evidence of the disease."

And, in the case of Ex Parte Shepard, 195 Pac. (Cal. App.) 1077, the court, in holding that mere suspicion that an individual is afflicted with an isolable disease did not give a health officer reason to believe that such person was afflicted, said:

> "If the respondent has any power to deprive Mrs. Shepard of her liberty, that power is to be predicated upon the provisions of section 2979a of the Political Code, which makes it the duty of health officers and others to take necessary measures to protect the public against the spread of certain diseases from persons whom such officers know or have reason to believe are afflicted with such diseases. There is certainly nothing in the record here to show that the respondent knows Mrs. Shepard to be diseased, and we cannot see that he has sufficient reason to believe that she is diseased. Paying just regard to the constitutional guaranties of the right to personal liberty and personal security, it must be asserted that more than a mere suspicion that an individual is afflicted with an isolable disease is necessary to give an officer 'reason to believe' that such person is so afflicted."

And in the case of Ex Parte Dillon, 186 Pac. (Cal.) 170, the court said:

> "Where sufficient reasonable cause exists to believe that a person is afflicted with a quarantinable disease, there is no doubt of the right of the health authorities to examine into the case and, in a proper way, determine the fact. Such preliminary investigation must be made without delay, and, if quarantining is found to be justifiable, such quarantine measures may be resorted to only as are reasonably necessary to protect the public health, remembering that the persons so affected are to be treated as patients and not as criminals."

From the foregoing, we are of the opinion that the State Board of Health, by adoption of the above rule, has kept within its statutory powers, but in the enforcement of such rule it must be borne in mind that what constitutes reasonable grounds for suspecting a person of a quarantinable disease must depend in each particular case upon the circumstances.

The third change provides:

> "Any person suspected of having any disease enumerated in Division 13, Section I, Book IV, who fails to submit himself or herself to examination or treatment as ordered by the district or local health officer and who fails to report regularly for treatment until released as cured by said health officer, shall be subject to quarantine as hereinafter provided.
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> In establishing quarantine, the district or local health officer shall designate a place or define the limits of the area in which the suspect shall be quarantined and no other person, except the attending physician, shall enter or leave said quarantined area without permission of the proper authorities.

> No one shall have the authority to terminate said quarantine except the officer responsible for it and only after the disease has become non-infectious as determined by said health officer or his authorized deputy.
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> Anyone released from quarantine but not cured shall sign a statement agreeing to place himself or herself under the medical care of a physician or clinic and remain under treatment until finally released by the health officer."

As previously pointed out, where there is reasonable sufficient cause to believe that a person is afflicted with a quarantinable disease, he may be quarantined, however, as pointed out in 29 C. J., Section 45, page 254, the character and extent of such quarantine must be reasonable.

> "While a large discretion is vested in sanitary authorities as to the character and extent of a regulation establishing quarantine, it must be reasonable, under the circumstances of the particular case, tending to prevent the spread of the disease. It cannot extend beyond the scope of the necessary protection."

And in 29 C. J., Section 48, page 255:

> "The period of quarantine detention and observation may be for so long as is necessary to insure against the spread of the disease. But the period of detention must be reasonable; it cannot be extended where there is no longer necessity for any further precaution."

We are of the opinion that the adoption of the above rule is within the statutory powers of the State Board of Health, but, as we have previously stated, the application of the rule must be reasonable, which, in turn, depends upon the circumstances of the particular case.

The fourth change provides:

> "No druggist or other person not a licensed physician shall prescribe or recommend to any person any drugs, medicine or other substance to be used for the cure of gonorrhea, syphilis, or chancroid, or shall compound any drugs or medicine for said purpose from any written formula or order not written for the person for whom the drugs or medicines are compounded and not signed by a physician, licensed under the laws of the State.

In the case of Ex Parte Lewis, supra, l. c. 22, the court said:

> "If it is within the power of the Legislature to provide for the licensing of all those who are skilled in the profession devoted to the health of the people and to lodge the determination of their qualifications in a board of professional men, it ought to follow that the Legislature could provide by a similar law for taking the judgment of men having the same skill upon a question of fact as to the existence of, or whether a given person was, or is, afflicted with a contagious, dangerous or infectious disease."

Licensed physicians being particularly skilled in the treatment of communicable diseases, we are of the opinion that such regulation is clearly within the police power of the state, and that the adoption of such rule by the State Board of Health would be within its statutory powers.

Respectfully submitted,

MAX WASSERMAN
Assistant Attorney General

APPROVED:

W. J. BURKE
(Acting) Attorney General

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