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New Jersey Supreme Court

STATE BOARD OF MEDICAL EXAMINERS OF NEW JERSEY,  
*Plaintiff,*  
*v.*  
HENRY P. LIVESEY,  
*Defendant.*

In Certiorari.

10

New Jersey, ss.:

20

The State of New Jersey to Charles L. Carrick, Esquire, Judge of the First District Court of the City of Jersey City,  
GREETING:

[SEAL]

We being willing, for certain reasons, to be certified of the determination or judgment given and made before you in a certain proceeding brought against Henry P. Livesey at the suit of the State Board of Medical Examiners of New Jersey, do hereby command that you send under your seal to our Justices of the Supreme Court of Judicature of the State of New Jersey, on the twenty-first day of February, next, the proceedings, testimony, exhibits, determination or judgment, aforesaid, with all things touching and concerning the same as fully and entirely as they remain before you by whatever names the parties may be called therein, together with this writ, that we may further cause to be done what of right we shall see fit to be done.

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Warrant.

tion ten of said act and against the form of said statute.

10 And it being further alleged that on the first day of April, A. D. nineteen hundred and twenty-six said Henry P. Livesey was convicted in the First District Court of the City of Jersey City, of a violation of the provisions of said section ten of said act and that the violation first above mentioned is another and a continuation of the violation for which said Henry P. Livesey was previously convicted.

20 You are hereby commanded to take the body of the said Henry P. Livesey so that you have him forthwith before the First District Court of the City of Jersey City at 20 York Street in said City of Jersey City in the County of Hudson and State of New Jersey, to answer unto the State Board of Medical Examiners of New Jersey, who sue for one penalty of five hundred dollars for the aforesaid violation, and that the said defendant may be dealt with according to law.

30 Witness, Charles L. Carrick, Esquire, Judge of the First District Court of the City of Jersey City this twenty-ninth day of October A. D. nineteen hundred and twenty-six.

(Signed) B. FRANCES MARRON,  
Clerk

Exhibit 2.  
COMPLAINT.

STATE BOARD OF MEDICAL EXAMINERS OF NEW JERSEY,  
*Plaintiff,*

v.

HENRY P. LIVESEY,  
*Defendant.*

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STATE OF NEW JERSEY, }  
COUNTY OF MERCER } ss.:

20 Charles B. Kelley, being duly sworn according to law on his oath says that he is a member of the State Board of Medical Examiners of New Jersey, and that deponent is informed and believes that during the months of May, June, July, August, September and October, nineteen hundred and twenty-six, at Arlington, in the County of Hudson and State of New Jersey, one Henry P. Livesey of Arlington, in the County of Hudson and State of New Jersey, did violate section ten of an act of the Legislature of the State of New Jersey entitled "An act to regulate the practice of medicine and surgery, to license physicians and surgeons and to punish persons violating the provisions thereof," approved May twenty-second, one thousand eight hundred and ninety-four, as said section ten was amended by act approved April eighth, one thousand nine hundred and twenty-one in the following respect, to wit: that the said Henry P. Livesey at the time and place aforesaid, did commence and continue the practice of medicine and surgery

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30

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Complaint.

without first having obtained and filed a license for such practice issued by the State Board of Medical Examiners of New Jersey, as provided for under the provisions of said act, in that the said Henry P. Livesey at the time and place aforesaid, did hold himself out as being able to diagnose, treat, operate and prescribe for human diseases, pains and physical conditions, and did offer and undertake to treat, operate and prescribe for human diseases, pains, injuries, deformities and physical conditions, and did at the time and place aforesaid treat and prescribe for the same, all of which is contrary to and in violation of said section ten of said act and against the form of said statute.

Deponent further says that on the first day of April, A. D. nineteen hundred and twenty-six, said Henry P. Livesey was convicted in the First District Court of the City of Jersey City of a violation of said section ten of said act, and that the violation first above mentioned is another and a continuation of the violation for which said Henry P. Livesey was previously convicted.

Deponent therefore says that the said Henry P. Livesey has incurred the penalty of five hundred dollars prescribed by section ten of the act above mentioned, as such section was amended, as aforesaid, for the aforesaid violation, and prays that the said Henry P. Livesey may be apprehended and dealt with according to law.

CHARLES B. KELLEY

Sworn and subscribed before me this nineteenth day of October, A. D. nineteen hundred and twenty-six.

LILLIAN H. HART  
Notary Public of New Jersey

Testimony.

FIRST DISTRICT COURT OF JERSEY CITY.

NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS, <i>Plaintiff,</i>  <i>v.</i> HENRY P. LIVESEY, <i>Defendant.</i>	} 10
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TESTIMONY.

Complete Transcript of Testimony taken in the above-entitled cause of the hearing held in the First District Court of Jersey City, before the Hon. Charles L. Carrick, Judge of that District Court, on Tuesday, the 11th day of January, 1927, at ten o'clock in the forenoon.

APPEARANCES:

GROVER C. RICHMAN, Esq., for the Plaintiff.  
 ELMER W. ROMINE, Esq., for the Defendant.

A. W. DENHAM,  
 Trenton Trust Building,  
 Trenton, N. J. 30

Sworn as stenographer. February 17, 1927.

Testimony.

FIRST DISTRICT COURT OF JERSEY CITY.

Before—CHARLES L. CARRICK, Judge.

10 State of New Jersey,  
Hudson County, } ss.:  
City of Jersey City, }

STATE BOARD OF MEDICAL EXAM-  
INERS OF NEW JERSEY,  
Plaintiff,

v.

HENRY P. LIVESEY,  
Defendant.

20

IN DEBT \$500.00.

October 26, 1926, the plaintiff filed a complaint alleging that defendant was guilty of violation section ten of an act of the Legislature of the State of New Jersey, entitled "An act to regulate the practice of medicine and surgery to license physicians and surgeons."

30

October 26, 1926, a writ was issued to John A. O'Grady, constable, who returned said writ with the body of defendant into court.

October 26, 1926, bond for appearance filed.

January 11, 1927, both parties appearing the trial of the cause was proceeded with as follows:

Upon application of plaintiff, A. W. Denham was appointed and sworn as stenographer.

40

On the part of the plaintiff, Elethia Smith, Millicent Wheeler, Harry Lubin and George A. Magean, were sworn and testified. Two bundles of salts, three papers were offered and received in evidence.

Testimony.

On the part of the defendant, Henry P. Livesey, was sworn and testified.

Whereupon the Court gave judgment in favor of Henry P. Livesey, defendant.

EDWARD L. KATZENBACH,  
Plaintiff's Attorney. 10

ELMER W. ROMINE,  
Defendant's Attorney.

COSTS:

Order of arrest ..... \$1.50  
Warrant, service and ret. .... .85  
Entering suit ..... .64  
Trial fee ..... 1.50

By Mr. Romine: If the Court please, before the State proceeds, I want to make a motion to dismiss as to the form of the complaint. The complaint charges in substance that Henry P. Livesey, at time and place aforesaid, did commence and continue the practice of medicine and surgery, without first having obtained and filed a license for such practice issued by the State Board of Medical Examiners of New Jersey, as provided for under the provisions of said act, in that the said Henry P. Livesey, at the time and place aforesaid, did hold himself out as being able to diagnose, treat, operate and prescribe for human diseases, pains, injuries, deformities and physical conditions, and did at the time and place aforesaid treat and prescribe for the same, all of which is contrary to and in violation of said section ten of said act and against the form of said statute. My reason for objecting is that the complaint is not specific, and is not certain, and does not set forth what particular things, the applied remedies, he 40

*Testimony.*

there did. The complaint is simply in the words of the statute. I have some decisions that may help your Honor on this subject. This is, under the statute, a summary proceeding, and it is like unto those cases of summary proceeding where there is violation of an ordinance, violation of the automobile act, and so forth. I happen to have one case here, that of *McAvoy v. Bennell*, decided by the Supreme Court in February, 1923. Their case I had taken up on certiorari, when there was this contention, and I charged there that the complaint was not sufficient. They charged in the language of the statute that the man did drive and operate his automobile in a reckless manner, so as to endanger the life, limb and property of other persons. My contention there was that it did not set forth what he did, or how he drove, and the Supreme Court in this case said the prosecutor contends that this complaint is defective, and that it does not allege what rate of speed Mr. McAvoy was driving, and is barren of any allegation disclosing facts which would show you in what manner Mr. McAvoy was reckless. In a complaint the charge should be set out, so that the accused may know what he is called upon to meet. Furthermore, the Court said, it will be observed that the complaint does not set forth any violation of speed by the prosecutor at the time of the accident. We deem the complaint invalid in that it does not set forth in what particular the prosecutor was, at the time of the accident, violating the provisions of the act. Under these grounds the conviction for reckless driving will be set aside. I also have another case which bears this out, for violation of an ordinance, and likewise took it up on certiorari to the Supreme Court in 1916, and likewise the Court

*Testimony.*

set aside the conviction on the ground that the complaint was insufficient. The Court said to charge a person in the language of the ordinance with having committed a breach of the peace is to charge such person with a legal conclusion predicated upon undisclosed facts. The facts should be set out so that the accused may know what he is called upon to meet. To properly charge a person with cursing or swearing, the words used are required to be set out in the complaint, and in that case, they say, the case of *Peer v. Dixon*, it was so decided by the Supreme Court. I do not want to take up your Honor's time regarding the various other cases along that line, except to say in conclusion that they are quoting the words of the statute. We don't know what particular thing they want to allege. If they charge this doctor with giving drugs, or with performing surgical operations, they should so state in their complaint what particular thing he did, and upon which they intend to rely, so that the defendant may know how to meet the issue. Ordinarily they should set forth the name of the person upon whom the suit is brought, and in the allegation set forth there should be some degree of fact, and as our Courts have said, they cannot quote the words of the statute in general terms, but must set forth the particular things which this man did. Suppose this man was a licensed Chiropractor, as will appear in this case, and they allege, or want to allege, that he gave medicines, or performed surgical operations, they should so state. Or suppose he was not licensed in any way whatsoever they should state what particular thing he did, so that he knows what he is called upon to meet; but we come here and know nothing about the allegations except the

*Alethia Smith, direct.*

10 general terms of the statute covering a long period  
of time. True, the State will refer to a case which  
was taken to the Supreme Court, where the ques-  
tion was raised, and I think I can give the case  
to your Honor, Lowry *against* State Board of Den-  
tistry. There the question was raised that the  
complaint was not sufficient as to the time, place,  
and the person upon whom the defendant prac-  
ticed. I don't object to that in this motion. My  
objection is that they don't set forth the facts  
which will show what particular thing they intend  
to rely upon and prove in this case. After the  
cases that I have referred to your Honor, this being  
a summary proceeding, I think the complaint  
should be dismissed until a more complete com-  
20 plaint is filed.

By Mr. Richman: This is the violation of a penal  
statute, and we allege violation of section 10, which  
is what the statute required us to do. Moreover,  
the practice of the defendant is a continuing of-  
fense, and the Supreme Court, in that Lowry case,  
sustained a complaint like this under the Dental  
act. This same motion has been made before  
probably a dozen District Court Judges, and all  
uniformly have dismissed the motion.

30 By the Court: This, of course, is a matter which  
ought not to be decided hastily, without very care-  
ful investigation. As against this complaint, which  
has been prepared in the Attorney-General's office,  
and on which they choose to rely. I will deny your  
motion and you may have an exception.

—  
ALETHIA SMITH, sworn for the plaintiff.

*Direct examination by Mr. Richman:*

40 Q. Did you visit the place of business of the de-  
fendant in this case? A. I did.

*Alethia Smith, direct.*

Q. Where did you go? A. 711 Kearny Avenue,  
Arlington.

Q. What kind of place was it? A. A bungalow.  
In front was a sort of living room, and we went  
through a long hall and in back there was a treat-  
ing room, and a leather treating table, desk, two  
10 chairs and electric machine.

Q. How many electric machines? A. One.

Q. What else did you notice? A. One day I was  
in there, there was a room in the back. He had  
another person in there, and he was treating, but  
I didn't see in that room.

Q. When did you go first? A. July 28, 1926.

Q. On that day did you go with anyone else? A.  
No.

Q. Whom did you go with? A. Mrs. Wheeler. 20

Q. Did you see the defendant on that day? A. I  
did.

Q. What did you say to him, and he to you? A.  
That day I had hives, and I was not feeling very  
well, and I told him this, and showed him the  
hives, and he said that I had a sluggish liver, and  
all my organs were sluggish because I was too  
stout; so I undressed and put a kimono on, and  
he rubbed my back to start up the circulation, he  
said; and then he rubbed the bottom part of my  
30 back, and took an electric vibrator that was con-  
nected to this electric machine by wire; he put the  
plug in the wall and he put that all over my back.  
Then he kneaded my stomach. Put the vibrator  
all over my stomach, and then he said that he  
would give me some salts that he had there; that  
they were different from ordinary salts because he  
put something in them that made them better; and  
he gave them to me and told me to put two cups  
full in a bath and a tablespoonful for an enema, 40

*Alethia Smith, direct.*

and continue the enema every morning, or for two mornings; and after that he wrote on a paper and said to get oxy crystine and take that every morning, and then he gave me a diet, wrote a diet out and told me to follow the diet.

10 Q. Did he take your blood pressure on that day?

A. He did take my blood pressure. He said it was very low, and he tested my heart and said my heart beat was slow.

Q. The paper you spoke of. Do you have it with you? A. I do.

Q. You are now speaking of the visit of July 28th. Is that the diet that you— A. That's the diet.

Q. Was this written in your presence? A. Yes.

20 Q. By the defendant? A. Yes.

By Mr. Richman: I offer it in evidence.

By Mr. Romine: No objection.

By the Court: It will be marked P-1.

Q. What else did he give you on that day? A. He gave me this envelope with oxy crystine written on. He wrote it on there.

30 Q. Did he say anything about the oxy crystine? What were you to do, did he say? A. Take two tablespoonfuls in the morning in a glass of water, and drink another glass of water after it.

By Mr. Richman: I offer it in evidence.

By Mr. Romine: No objection.

By the Court: It will be marked P-2.

Q. What else did he give you on that day? A. He gave me this pamphlet about your food.

Q. Gave you a pamphlet? A. Yes.

30 Q. Entitled "Use and Abuse of Food?" A. Yes.

40 Q. Gave it to you, did he? A. Yes.

*Alethia Smith, direct.*

By Mr. Richman: I offer it in evidence.

By Mr. Romine: No objection.

By the Court: It will be marked P-3.

Q. What else did he give you? A. He gave me a card receipted for the amount of money I paid him, \$10 for six treatments. Gave me a card and punched the card for the first treatment. 10

Q. Is this the card? A. That's the card.

By Mr. Richman: I offer it in evidence.

By Mr. Romine: No objection.

By the Court: It will be marked P-4.

Q. After that, what happened? A. He told me to come back.

Q. Did he give you any salts on that visit? A. He gave me these salts. 20

Q. That's the whole package he gave you? A. Yes.

Q. On this one visit? A. Yes.

Q. Gave it to you just like this? A. Just like that.

By Mr. Romine: I don't know what's in there now, but, go ahead, offer it.

By Mr. Richman: I offer it in evidence.

By the Court: It will be marked P-5. 30

Q. What else happened on that visit? A. That's all that happened on that visit. He told me to come back.

Q. Say anything about your condition that day? A. He told me I was in pretty bad shape.

Q. Where was Mrs. Wheeler? Right there with me in the room.

Q. Did you return again? A. Yes, August 2d.

Q. Did you go alone? A. No, with Mrs. Wheeler. 40

Q. What happened on that visit? A. He took

*Alethia Smith, direct.*

my blood pressure again. Said it was better, but not like it should be, and he said my heart was better, but that was not like it should be.

Q. When you say he took your blood pressure, how did he do it? A. Had a sort of little machine, put a rubber thing around my arm. Had a little bulb on it, and he pumped it up with that, and there was a little meter on it, and he watched the meter.

Q. You say he tested your heart? A. He did.

Q. How did he do that? A. He had this little thing fastened to the end of two tubes, and put the ends in his ears.

Q. What else did he do to you an that second visit? A. He rubbed my back, and kneaded my stomach, and used a vibrator all over my body.

Q. You mean an electric vibrator? A. Electric vibrator.

Q. That was attached to what? A. Put a plug in the wall, to the electric current.

Q. Did you pay him? A. No. He punched the card, because I had paid him on the first visit.

Q. How much? A. \$10 for six treatments.

Q. Did you return to see him again? A. Yes, August 11th.

Q. What happened on that visit? A. He rubbed my back and stomach, and kneaded my stomach, and used the electric vibrator on me, told me to be sure and stick to my diet, and sure to take the oxy crystine.

Q. What were these electric treatments like? Just what did he do? A. He put a towel over my back, and put this vibrator, run it all up and down my spine, all over my sides, and then put a towel over my stomach and ran it over my stomach and down my legs.

*Alethia Smith, direct.*

Q. Anything else happen on that visit? A. No.

Q. Anything said about diet? A. I told you he said to stick to my diet, and be sure and take oxy crystine.

Q. Anything said by him as to your condition on that day? A. Well, he said I would improve with treatment, but I was not all right yet.

Q. When did you return? A. August 19th.

Q. What happened on that visit? A. On that day he rubbed my back and my stomach, used the electric vibrator all over me, and then he got a little lamp that he held in his hands, from the next room, and he attached that to the plug in the wall, the electric current, and he put that light on my stomach, and on my back, and on the back of my neck and down on my limbs.

Q. What kind of lamp was that? A. A little lamp that he held in his hand, with a green shade over it.

Q. Did it give out heat? A. Yes.

Q. Much? A. Quite a lot of heat.

Q. He put that over your entire body? A. Yes.

Q. Did you return again? A. August 23d.

Q. 23d? A. 23d.

Q. What happened on that visit? A. On that day he rubbed my back, and my stomach, as he had done before, put the vibrator all over my back, and on my stomach, and down my legs.

Q. What else did he do? A. I think that's all that day.

Q. Did he ask you whether you were an Investigator of the State Board, or not? A. No, not on that day.

Q. What day was that? A. My last visit.

Q. August 26th? What happened on your last visit then? A. He did the same as before. Rubbed

*Alethia Smith, cross.*

my back. Used the vibrator on me and told me that when I first came there he was kind of afraid of me because he thought I was an Investigator for the State, and he said the Chiropractors were not allowed to use electricity, and he said, even  
10 this, and held the vibrator up that he was using on my legs. I told him my feet hurt, so he told me to wear wider shoes.

Q. What do you mean, he examined your feet?  
A. I took my shoes off, and he looked at them, and he looked at the shape of them, felt the toes to see where they hurt, and he said I should wear wider shoes. He took his shoes off, and showed me how his feet were, and did some exercises to show me how to strengthen my feet; and he told  
20 me to tell Mrs. Wheeler to come back, that he had to make sure of her first. He wanted to use a lot of electricity on her, and was positive he could do her a lot of good.

Q. Each time he punched the card, did he? A. He did.

Q. You didn't return after that?

*Cross examination, by Mr. Romine:*

Q. You are an investigator of the State Board, are you? A. I am.  
30

Q. Went there for the purpose of finding out what Dr. Livesey was doing, did you? A. Yes.

Q. He gave you, you say, this package of salts? A. He did.

Q. You understood that to be in the nature of Epsom salts? A. He said there was something else in them that made them better than Epsom salts, that's with something he had put in them to make them better.

Q. Whatever it was, it was salts just the same?  
40 A. I suppose, if that's what you would call it.

*Alethia Smith, cross.*

Q. You were to use it for the purpose of bathing, as well as for laxative purposes, is that right? A. Yes.

Q. You had, according to the doctor's diagnosis, a sluggish condition, is that right? A. Yes.

Q. You needed something to clean out your system. Isn't that what you understood? A. Yes. 10

Q. This little paper that he wrote on, this oxy crystine, you understood that also to be a laxative, sort of laxative, didn't you? A. He said it toned up all your organs.

Q. You had no difficulty in purchasing it, did you? A. No.

Q. You walked right in the drug store and told them what you wanted, and they gave it to you, is that so? A. Yes. 20

Q. Didn't need a prescription for that, did you? A. I needed him to tell me what to get.

Q. You could not remember the name. That's the reason you wanted to have it written out, isn't it? A. He wrote it for me and told me to go to Lubnam's across the street and get it.

Q. Because that's where they kept it, isn't that right? A. I suppose.

Q. Ever try and get it at any other drug store? A. I did. 30

Q. Did you get it?

Q. To be sure of yourself when you went to the drug store you showed them the name to get that particular form? A. I didn't.

Q. You remembered it after that time? A. Yes.

Q. So that every drug store you went to you didn't want any paper to tell them the name, did you? A. No.

Q. Just walked in, and got it, and paid for it, and walked out, is that right? A. Yes. 40

*Millicent Wheeler, direct.*

Q. Did the doctor ever perform any surgical operation upon you? A. No.

Q. Ever give you any drug of any kind? A. Gave me salts, they are a form of drug.

10 Q. You call this a drug, do you? A. A form of drug.

Q. Aside from this, and oxy crystine, did he ever give you any other drugs? A. No.

Q. Whether they are strictly considered drugs you don't know, do you? A. I always supposed they were.

Q. Don't you know when you speak of drugs from the medical standpoint they are such that require a prescription? A. I don't know anything about it.

20 By Mr. Romine: You don't? That's all.

MILLICENT WHEELER, sworn for the plaintiff.

*Direct examination by Mr. Richman:*

Q. Did you visit the defendant in this case? A. I did.

Q. When was your first visit? A. July 28th.

Q. Whom did you go with? A. Mrs. Smith.

30 Q. What was the place like inside? A. A bungalow, and we entered from the porch into a living room, and from the living room a small hallway that we walked down to reach the treating room.

Q. Yes. What was in the treating room you speak of? A. In the treating room was a small desk, several chairs, treating table, and an electric machine.

Q. How large was this electric machine? A. Just a small one.

40 Q. Did you have a conversation with him yourself? A. I did.

*Millicent Wheeler, direct.*

Q. What did you tell him? A. I told him about my stomach condition, and I was troubled with my stomach, and he told me to get ready for a treatment, and I undressed, and put on a kimono, and he had me lay face downward on the table, and he rubbed my back with his hand, and then 10 used the vibrator on me, and he had me turn over on my back, and he rubbed my stomach, and then he used the vibrator on my chest and stomach and limbs.

Q. Then what happened? A. He took my blood pressure at that time, and said it was entirely too low, and he read it a second time. He said he was surprised to find it so far below normal. He said I had a sluggish condition, and a torpid liver, and my circulation was not very good. 20

Q. Did he give you anything? A. He gave me salts to use as a bath and enema, and he told me to get oxy crystine to take in the morning after I had had my salts and enema for several mornings, then I was to use oxy crystine.

Q. Did he tell you to take oxy crystine every morning? A. Every morning for several mornings until I had this sluggish condition improved.

Q. How often were you to take salts? A. I was to use it every morning, and several mornings take 30 an enema, but I was to use the salts for bathing until they were gone.

(Adjournment for luncheon 12:30 to 2 P. M.)

Q. Do you have those salts with you? A. Yes.

Q. That's the package he gave you? A. That's the package he gave me.

By Mr. Richman: I offer it in evidence. 40

By the Court: It will be marked P-6.

*Millicent Wheeler, direct.*

Q. That was on what visit? A. My first visit, July 28th.

Q. After that did you go again to see him? A. I did, August 2d.

Q. With whom did you go? A. Mrs. Smith.

10 Q. What happened? A. Went into the treating room and prepared for treatment, and the doctor had me lie face downwards on the treating table, rubbed my back, and used the electric vibrator on me. I turned on my back on the table, and he rubbed my stomach, and used the electric vibrator over my chest, stomach and limbs; also on the back of my limbs when I was lying face downward.

20 Q. Was there anything said on that visit concerning the salts? A. He asked me if I had used the salts for the bath, and also if I had taken the enema, and if I had begun to use the oxy crystine.

Q. Did you pay him on this visit? A. On the first visit I paid him \$3.00, and on the second visit I paid him \$2.00.

Q. In cash? A. Yes.

Q. After the August 2d visit, did you go again? A. Yes, I went August 19th.

30 Q. What happened on that visit? A. He asked me how I was feeling, and I said not so good. I was having trouble with my throat, and explained that at that time my throat had become very sore. After I was ready for my treatment, he had me sit on the side of the treating table, and he examined my throat.

40 Q. What do you mean by that? What did he do? A. Looked into my throat, saw what condition it was in, and he said I had a very bad condition, and he took his hand and rubbed the outside of my throat, and then took an electric lamp,

*Millicent Wheeler, direct.*

which he held in his hand, and held it close to my throat until it became very warm.

Q. Was this lamp connected with anything? A. Connected up to a plug, and a switching arrangement in the room.

10 Q. What else happened? A. He told me I would have to come regularly. I should come at least three times a week until the throat condition was cleared up. Then he gave me the regular treatment I had had before, rubbed, having me lay on the table on my back, using the electric vibrator, turning me over and rubbing my stomach, using the electric vibrator on my chest and stomach, and on my limbs.

20 Q. Did you go again after that? A. Yes, I went August 23d.

Q. Did you go with Mrs. Smith? A. I went with Mrs. Smith.

Q. Did you see any of her treatment? A. I saw all the treatment she had each time she was with me.

Q. How near to her? A. Sitting in the room right beside her.

Q. So you saw what happened? A. Yes.

30 Q. What took place on the visit of August 23d? A. I had prepared for the treatment, and the doctor had me lay face downwards on the table, rubbed me, rubbed my back, used the electric vibrator on my back and limbs, had me turn over, rubbed my stomach, using the electric vibrator on my chest and my stomach, and also on my limbs.

40 Q. Did he say what the effect of these treatments would be? A. He felt this would stimulate the circulation, and I needed attention to the torpid liver, which was not acting properly, and would help to throw off the poisons that were causing my

*Harry Lubman, direct.*

trouble, and on the first visit he gave me a diet the same as Mrs. Smith. He gave us the diet together, which we were to follow, and I was to follow that throughout my treatment.

10 Q. The same as he gave Mrs. Smith? A. Yes, the one diet for the both of us.

*Cross examination by Mr. Romine:*

Q. Did you see in the doctor's office his license as a chiropractor? A. Yes.

Q. Is this the license you saw (displaying it)? A. I don't recall that. He had a sign on his window.

20 Q. Was the license you saw in his office similar to this one? A. I remember seeing a license, but I don't remember reading it, and could not be positive it was the same one.

By Mr. Romine: That's all.

HARRY LUBMAN, sworn for the plaintiff.

*Direct examination by Mr. Richman:*

Q. What is your business? A. Pharmacist.

Q. Where located? A. 680 Kearny Avenue, Arlington.

30 Q. Do you know the defendant in this case? A. Yes, I do.

Q. Do you receive prescriptions from him? A. No, sir.

Q. None at all? A. No, sir.

Q. What became of prescription No. 28003 in your store? A. That's not a prescription. I have it here.

40 Q. Let's see what you've got? Do you know the handwriting of the defendant? A. Yes, I know the handwriting.

*Harry Lubman, cross.*

Q. Is this his handwriting? A. This here.

Q. The writing in ink in his handwriting? A. This upper part.

Q. How did you get that? A. I wasn't present on that day when it was brought to the store. The clerk received it. He's a registered pharmacist. 10

Q. Do you know who brought it in? A. I don't know, I was out of town.

Q. Did you fill it? A. No, sir.

Q. Did your store fill it? A. Yes, sir, they sold that.

Q. What is it? A. Oxy crystine, and two-quart rubber bag enema attachment.

By Mr. Richman: I offer it in evidence.

By the Court: It will be marked P-7. 20

*Cross examination by Mr. Romine:*

Q. You say this paper offered in evidence is not a prescription? A. No, sir.

Q. The article called for on there is oxy crystine and some fountain syringe, isn't it? A. Yes, sir.

Q. This oxy crystine, what is that? A. A preparatory article. We sell it over the counter in drug stores.

Q. Don't need a prescription from the doctor? A. No, sir; sold freely. 30

Q. Anybody can go in and buy it? A. Does not require a pharmacist to sell it.

Q. What is it, do you know? A. A saline laxative, just like Epsom salts.

Q. Something like salts? A. Like salts.

Q. Takes the place of salts as a laxative? A. Yes.

Q. Not a drug, is it? A. No, sir.

*By the Court:* 40

Q. I notice at the foot of the paper in figures

*Harry Lubman, cross.*

28003, why is that? Who put that on there? A. The relief clerk. He must have put it down to keep a record of what he sold in my absence.

Q. What does that 28003 indicate to you? A. Just a number he put on in my absence.

10 Q. The number of what, a prescription number?

A. It's not a prescription number. Just a record that he has filled this in my absence. Just a record of what he had sold while I was away.

Q. What would that number indicate to you? You don't put a number on every sale made in the store, do you? A. No, not every sale, but whatever the relief clerk has sold over the counter.

20 Q. Whatever prescriptions were filled? A. No prescription to sell that. Because I was away, a record, a record of what he sold.

Q. That number. What is the number. That number 28003, what does that indicate? A. Just put a number on our file in the prescription room, and put it down to show what was sold.

*By Mr. Romine:*

Q. What I understand is that while you were away the clerk handled this order? A. Yes.

30 Q. He put that in with the prescription orders? A. Prescription orders.

Q. That's how the number got on it, on this paper? A. Yes. I would have destroyed it. I don't need to even keep it on file.

*By Mr. Richman:*

Q. It was there, though, wasn't it, in your prescription file? A. That was in the room.

*By Mr. Romine:*

40 Q. Do you happen to have this oxy crystine with you? A. I have it.

*George McGean, direct.*

Q. I mean you have a similar bottle that you sell over the counter? A. Yes.

By Mr. Romine: I will offer that bottle when the time comes. That's all.

GEORGE McGEAN, sworn for the plaintiff. 10

*Direct examination by Mr. Richman:*

Q. Where do you live? A. 21 Maple Street, Kearny.

Q. What's your business? A. Saleman, cake salesman.

Q. Do you know the defendant in this case? A. Yes, sir.

Q. Have you visited him? A. Yes, sir. 20

Q. When? A. Some time last summer. I have no record of the dates.

Q. Remember the month? A. I think it was August, or latter part of July.

Q. 1926? A. Yes, sir.

Q. Why did you go to him? A. 711, I believe, Kearny Avenue, Arlington.

Q. Why did you go there? A. I had rheumatism.

Q. Where? A. In my left shoulder. 30

Q. What did you say to him when you went? A. I told him how it affected me.

Q. What did he do? A. Gave me some light application, and massaged my arm and shoulder and into my back.

Q. What else did he do? A. One time he put a vibrator on my shoulder, I think that was the last treatment.

Q. How many times did he put the vibrator on? A. I think once, possibly twice, but I can only remember thoroughly once. 40

*George McGean, cross.*

Q. Give you anything, did he? A. No, sir.

Q. No medicines? A. No, sir.

Q. You think he used the vibrator twice? A. I believe so, yes, twice, this last time I think, twice.

Q. Did he use liniment? A. No, sir.

10 *Cross examination by Mr. Romine:*

By Mr. Romine: No questions.

By Mr. Richman: I offer in evidence certificate made evidential under the act of 1924 to the effect that the defendant is not licensed to practice medicine and surgery in this State.

By Mr. Romine: I think the certificate is insufficient under the act of 1924, if the Court please.

20

By the Court: You think it's insufficient?

By Mr. Romine: The certificate certifies he is not authorized to practice medicine and surgery, does not have a license to practice medicine and surgery.

By Mr. Richman: That's what he's charged with.

By Mr. Romine: That's not what he's charged with. The act itself says this: It shall be the duty of the Secretary of the State Board of Medical Examiners, whenever requested so to do, to certify under the seal of said Board whether the records kept by the State Board show, or fail to show, the issuance of a license to practice medicine or surgery, or any branch thereof, osteopathy, medicine, chiropractic, or any other profession or business, the practice of which may be licensed by said State Board. The certificate does not go as far

30

40

*Henry P. Livesey, direct.*

as the act requires. It merely says authorized to practice medicine and surgery. The particular point in this case is that he is licensed to practice chiropractic, and the certificate should show that he is a licensed chiropractor. It should say he is not licensed to practice medicine and surgery or any branch thereof, because under the Laws of 1921 they have what is known as a Limited License, under which chiropractors may be licensed, and therefore it is denominated in this act as a branch of medicine and surgery.

10

By the Court: I shall not pass upon the certificate at this time, but I will receive it in evidence, and mark it P-8. It's a proper certificate as far as it goes.

20

By Mr. Romine: I take exception.

By Mr. Richman: State rests.

HENRY P. LIVESEY, defendant, sworn.

*Direct examination by Mr. Romine:*

Q. You are the defendant in this case? A. Yes, sir.

Q. I show you this certificate or license and ask you if it was issued to you as a chiropractor? A. Yes, sir.

30

Q. What date, or about what date? A. Yes, sir.

Q. As stated in this certificate? A. Yes.

By the Court: What is the date?

By Mr. Romine: The date, if the Court please, is November 24, 1920, made out to Dr. Henry P. Livesey.

By Mr. Romine: I offer it in evidence.

40

By the Court: It will be marked D-1.

*Henry P. Livesey, direct.*

Q. You have practiced chiropractic since that time? A. Yes, sir.

Q. Where? A. 711 Kearny Avenue, Arlington.

Q. Something has been said about taking blood pressure. Do you take blood pressure? A. Always. 10

Q. When, in reference to the time a patient comes to you? A. First thing I do is take the blood pressure and examine her.

Q. What is that? A. Because that indicates to me the condition of the patient. Whether its proper for me to use my method, or chiropractic, or what I think is good for them.

Q. You mean by that whether the person is physically fit? A. Yes, that's my indication of their health. 20

Q. That's your method, is it? A. Yes, sir.

Q. Some reference has been made here about salts. Do you advise patients to use salts? A. I do.

Q. And give it to them when they come there? A. Yes.

Q. In what amounts, or in what quantity? A. I put it up in packages for bath use, five pounds or so in a package.

Q. Did you ever advise these ladies that were here testifying today to use the salts inwardly? A. With the enema, yes, but not otherwise. 30

Q. I think it was Mrs. Smith that testified that you told her, or wanted to know from her, whether she was an investigator or inspector of the Medical Board, did you make such an inquiry of her?

A. No, not at all.

Q. Did you make any statement to her that you as a chiropractor could not use any electrical appliances? A. Absolutely not. 40

*Henry P. Livesey, direct.*

Q. She made some statement, I think, that a light was used on her stomach, or on her body. Did you use such a light? A. No light at all.

Q. Did you use a vibrator? A. Yes.

Q. What sort of vibrator was it? A. A common vibrator such as you use in massage, in massage parlors, beauty shops, etc. 10

Q. What was the object of using that? A. The object is to release the contraction of muscles and stimulate the circulation.

Q. Use it as an adjunct to your chiropractic. Some reference has been made here to oxy cystine. Do you know what it is? A. Yes.

Q. You use it, do you? A. Yes, I use it.

Q. Advise patients to use it? A. Sometimes I do, in certain cases, as an eliminator. 20

Q. What is its purpose? A. In diseased conditions, when using chiropractic as advanced now, chiropractic causes activity of the glands. When people are diseased they are generally troubled with a toxic condition, and by eliminating this by bathing and saline, you get quick results. That's the reason I advise it.

Q. Your treatment takes effect more quickly with the use of bathing and this eliminator? A. Yes. 30

Q. This oxy cystine, is it somewhat similar to salts? A. Yes, somewhat similar to a saline, similar to Epsom salts, or things of that form.

Q. Sometimes when your patients come in, and you tell them to take it, do they remember the name, or do you have to write it down for them? A. They don't as a rule remember it.

Q. Then you give them a memorandum to go to the drug store and get it? A. That's the idea.

Q. Do you do that as a prescription? A. No, I 40

*Henry P. Livesey, cross.*

don't give it as a prescription, just simply because the name is too long.

Q. Do you give prescriptions? A. No, I don't give prescriptions, certainly not.

10 Q. Do you consider this a drug? A. Not at all, no, I would not consider it a drug.

Q. Speaking of the use of electric appliances, have you at times used these in your profession? A. I have, for over, I guess I could go back twenty years. I have used them for twelve years in Kearny.

Q. You have used them in the treatment of disease, and physical conditions of human beings, for upwards of twenty years, is that right? A. Yes.

Q. Both at Kearny and other places? A. Yes.

20 Q. And since you were a chiropractor licensed in New Jersey? A. Yes.

Mr. Romine: That's all.

*Cross examination by Mr. Richman:*

Q. You are not licensed to practice medicine and surgery in New Jersey? A. No, sir.

30 Q. You were, were you not, on April 1, 1926, convicted in this court for violation of the Medical Act? A. Unfortunately I made an error of judgment.

Q. You pled guilty? A. I did.

Q. Yes, in this court?

By the Court: When was that?

By Mr. Richman: April 1, 1926.

Q. And paid the penalty? A. Yes, sir.

Q. \$200? A. Yes, sir.

40 Q. You were then charged with the practice of medicine and surgery? A. I don't know what I

*Henry P. Livesey, cross.*

was charged with, to tell you the truth. A little error in judgment on my part. I took the advice of the people who arrested me, and just paid the fine. Unfortunately, I didn't consult with an attorney, I guess. I found out afterwards I admitted things that I figure I had no right to plead guilty to. 10

Q. You made a mistake then? A. I did. I certainly did make a mistake.

Q. Epsom salts is a medicine, isn't it? A. I would not consider it.

Q. What is it? A. It's a solvent, just for your body, that's all.

Q. Do you take it inwardly? A. Well, inwardly, I would not call it medicine in that respect.

20 Q. It's taken to relieve a toxic condition in your system, isn't it? A. No, it's taken to help.

Q. Help what? A. Elimination of toxin in chiropractic treatment.

Q. And taken before, isn't it? A. I don't know about that, because I don't advise that it be taken before.

Q. It acts as a medicine, does it, to relieve poison from the system? A. It acts as a purgative. Empties the bowels.

30 Q. Oxy crystine is stronger than salts, isn't it? A. No, it's not really as strong. In my treatment, by dosing, take so much serum out of the blood.

Q. Do you know what it consists of? A. It's a saline. I have used it on myself.

Q. That's a medicine? A. That depends upon the construction you put on it. Glass of water may be medicine if I put Epsom salts of any kind in it.

40 Q. Isn't that referred to as a medicine? A. I should not think so, from the point of view that you take it. Not as a prescription medicine.

*Henry P. Livesey, cross.*

10 Q. Why do you tell patients to take it? A. I tell you. My theory of disease is from the biological point of eliminating poison from the system. A very natural method. By getting activity of the nervous system, to get the glands and other organs active, why we get relief in disease. We eliminate poisons, and since these are eliminated we get quicker results produced than by any other methods. In doing that, this or salts would be acceptable, but not as a remedy.

Q. That's why you advise the taking of oxy cystine? A. That's the point of view I work from.

Q. And you did it with Mrs. Smith? Told her to take it? A. Yes.

Q. And likewise Mrs. Wheeler? A. Yes.

20 Q. What is it you put in these salts, that you told Mrs. Smith you did? A. Nothing.

Q. What? A. Not anything.

Q. She says you did? A. No, sir.

Q. That isn't so? A. No, sir; plain Epsom salts. Simple enough to find out. Have them analyzed.

By Mr. Richman: That's all.

30 By Mr. Romine: That's all. That's all we have. I feel there should be direction of verdict of dismissal, not guilty, at least.

40 By the Court: I should question very seriously if this complaint, which is made here, is considered as justified by the statute, in forbidding the use of the vibrator, or the use of any ordinary remedy, which could be used, and would ordinarily be used, by persons who were not qualified, or licensed, as physicians and surgeons. It is evidently the purpose of the statute to prevent persons, who are licensed as chiropractors, or any particular line, from holding

*Exhibits.*

10 themselves out and doing things which only physicians and surgeons should do. It seems to me these remedies which were used here as an adjunct to this chiropractic procedure were merely ordinary household remedies, or remedies at any rate which are not peculiar to the practice of medicine and surgery. I presume that any use of any ordinary stimulant, or any internal drink, might, in a sense, be spoken of as medicine, but I don't think that when the statute speaks of the practice of medicine and surgery, it means that the use of ordinary salts, which are household remedies that anybody can use, is practicing medicine. It seems to me this case has, to my mind, fallen short of meeting the complaint that has been made. I don't think there's anything in justifying me in concluding as a matter of fact that the defendant was practicing medicine and surgery in the treatment which has been testified to by the witnesses here. There will be a judgment for the defendant in this case.

**Exhibit P-1.**

(LETTERHEAD)

Electro Therapy.

LIVESEY HEALTH INSTITUTE

DR. HENRY P. LIVESEY

CHIROPRACTIC SPECIALIST

711 Kearny Ave., Arlington

Cor. Magnolia Ave.

Phone Kearny 0846.

*(written in ink)*

40 Drink 10 minutes before breakfast, glass of cool water with juice of orange in it.

*Exhibits.*

10 Eat dish of  $\frac{1}{2}$  bran and  $\frac{1}{2}$  cornflakes with cream, etc. to taste. One cup of tea, also any fruit, but no other food. In two hours glass of cool water with a little fruit juice. Lunch vegetable soup or vegetables cooked. Fruit, Green salads. Toast stale bread.

Crackers, a little plain cooked meat, salad dressing, olive oil, vinegar.

*Dinner* Meat, fish or poultry, vegetables, green salads, potatoes in moderation, tea but no dessert except fruit.

No candy. Sweet drinks, lemonade, juice of pineapple juices with honey. Warm baths and an enema of two qts. warm water.

20

**Exhibit P-2.**

Envelope marked "Oxy Crystine."

**Exhibit P-3.**

## THE USE AND ABUSE OF THE FEET

30

For years mankind has been walking about with a block under the rear part of each foot called a heel. Nature never intended this sort of abuse by bringing the whole weight of the body upon the foot with a span like a bridge supported at each end, hence so many have more or less trouble arising from their feet.

The Indians with their moccasined feet, uncivilized barefoot races, and the sandaled ancients never had arch strain and could endure untold travel and standing with little tiring.

40

The demands of fashion and so called style in foot wear, constantly changing from high to low heels and back again, or perhaps to no heel at all, such as in house or outing shoes, strains the

*Exhibits.*

muscles and nerves of the feet beyond endurance, resulting in tired, aching limbs, feet and muscles, or finally flat foot. Few can stand for hours without leg weariness.

10 Many have pains, aching or swelling, stimulating rheumatism in the feet and limbs, even in the back and hips from reflex action and strain upon the delicate nervous structure of the feet and limbs. If a person is predisposed to rheumatism by the blood being loaded with foreign waste matter, then most surely will rheumatism attack the weak or injured parts more readily.

20 Years of experience in treating weak feet, flat feet, instep arch strain, etc., has taught me much. I have discarded and proven unworthy many ideas that seemed useful at the time, seeking for some better method of producing surer results.

30 Arch supporters of all kinds were tried with poor success. The advertised shoes failed. In about one case in nine were stock arch supports of orthopedic shoes useful, and that was where they happened to be just the right fit in individual cases, but this was haphazard guess work, for they nearly all consisted of a curved plate with a hump or pad to press into the hollow of the foot to raise it up, without regard to the anatomy of the foot, and such, in many cases, tortured, was very uncomfortable, and necessitated wearing large, ill fitting shoes.

40 To-day several makers of shoes have gone to the other extreme with soft, flexible shanks, claiming that muscle exercises alone are needful. The proper ground is between these two extremes, with support enough at the right point, as each individual foot requires, to remove the strain from the leg muscles and allow these muscles by use to regain their tone.

After other methods failed to give relief in any

*Exhibits.*

large per cent. of cases the following method was evolved which gives the desired result.

10 The foot is raised from the floor to relieve the weight pressure and relax the muscle tension and to bring the parts into more normal position, after which an impression is taken in modeling compound and from this impression a support is built of a very light reinforced cementitious compound, by a special process of manufacture, containing no metal of any kind, yet waterproof, strong in the necessary supporting part, but flexible and springy where needed.

It is amazingly light in weight (an ounce or less) and exceedingly strong, fits the foot perfectly, takes up no room in the shoe, and is very comfortable. 20 This support may be worn in any style shoe, in fact, a well fitting snug shoe is an added advantage. Strange as it may seem, a smaller shoe can be worn more comfortably with this support than without, as the foot is held back from being forced forward.

This orthopedic support (protected by patents) is so much superior to the existing common "hump" plate or arch supporting shoes, that there is no comparison whatever. It would be equally 30 as good policy to use stock eye-glasses without having the eyes fitted, or wear false teeth from a stock model, the same for every mouth, as stock arch supports made without an impression of the foot.

The support should not be rigid as all metal plates are, but should allow the arch to functionate naturally in an elastic manner. This fact is based upon many years' experience in treating the feet.

40 Many people say, "Why I have no fallen arches, my insteps and arches are very high." Then all the more reason that the arches may be under

*Exhibits.*

strain. The weakest feet have high arches, for the higher the curve, the more room to drop, each arch being under strain of the weight of the whole body when walking, first one foot, then the other alternately, all day long.

Weak feet or arch strain often affect the entire nervous system and many a nervous wreck could stop all the trouble by wearing proper fitting supports for the arches of the feet; in fact, few people would go without supports for the arches if they knew the great comfort and restfulness they give even when there is apparently nothing wrong with the feet. 10

The LIVESEY Method of making arch supports is a certain one, for it does not deal with contingencies. The object and provision in making every support to measure gives correctly applied resistance and certainty of support where it is needed. 20

It has revolutionized the whole scheme of support fitting for the feet, elevating it to the plane where it rightfully belongs. Perfect in operation, so comfortable and corrective in effect and proving so satisfactory to those who are enjoying its efficiency daily that it stands pre-eminently above every other method used or devised. 30

The price is reasonable, \$10.00 per pair or \$6.00 for a single support in all ordinary cases. In cases where there are such complications that examinations are necessary or special designs out of the ordinary required, special prices are charged according to the complexity of the trouble with the feet to be treated and fitted.

DR. HENRY P. LIVESEY,  
711 Kearny Avenue,  
Kearny, N. J. 40

Telephone Kearny 0846

**Exhibit P-6.**

Trenton, N. J., Dec. 29, 1926.

10 I, Charles B. Kelley, do hereby certify that I am Secretary of the State Board of Medical Examiners of New Jersey, and that the records kept by the said Board fail to show the issuance of a license to practice medicine and surgery to Henry P. Lievesy.

I do further certify that this certificate is made by me for use in the proceedings to which the State Board of Medical Examiners is a party plaintiff and Henry P. Livesey is a party defendant.

[SEAL] CHARLES B. KELLEY,  
*Secretary, State Board of Medical Examiners of New Jersey.*

20

**Exhibit P-7.**

DR. HENRY P. LIVESEY  
CHIROPRACTIC SPECIALIST  
711 Kearny Ave., Arlington, N. J.  
Cor. Magnolia Avenue  
Phone Kearny 0846.

*(Written in ink)*

30

Bot. osay Cristine  
2 qt. rubber bag & enema attachment  
Sg. Cis Dieted L.  
28083  
7-2-26

40

**Reasons.**

NEW JERSEY SUPREME COURT.

STATE BOARD OF MEDICAL EXAMINERS OF NEW JERSEY,  
*Plaintiff-Plaintiff in Certiorari.*

10

v.

HENRY P. LIVESEY,  
*Defendant-Defendant in Certiorari.*

Now comes the State Board of Medical Examiners of New Jersey, the above-named plaintiff, and assigns and files the following reasons upon which it will rely for the reversal of the judgment in the above-entitled cause:

20

1. The Court erroneously found the defendant not guilty.
2. The Court erroneously gave judgment for the defendant and against the plaintiff.
3. The Court, under the evidence, should have found the defendant guilty as charged.
4. The judgment of the Court is erroneous, illegal and contrary to law.

30

Respectfully,

EDWARD L. KATZENBACH,  
Attorney-General,  
*Attorney for State Board of Medical Examiners of New Jersey.*  
Filed April 1, 1927.

40

**Opinion of Supreme Court.**

(Filed Feb. 8, 1928.)

NEW JERSEY SUPREME COURT.

No. 283, October Term, 1927.

10

STATE BOARD OF MEDICAL EXAM-  
INERS,*Plaintiff,*  
*Prosecutor-in-Certiorari,**v.*HENRY P. LIVESEY,  
*Defendant,*  
*Respondent-in-Certiorari.*

20

Submitted November 4, 1927; decided February  
8, 1928.

On certiorari, etc.

Before Justices TRENCHARD, KALISCH and KATZEN-  
BACH.For the respondent-in-certiorari, ELMER  
W. ROMINE.

30

For the prosecutor-in-certiorari, GROVER  
C. RICHMAN and EDWARD L. KATZENBACH,  
Attorney General.

PER CURIAM:

The defendant in this case was charged with the  
practice of medicine and surgery without a  
license. The case was tried before the First Dis-  
trict Court of Jersey City and the court gave judg-  
ment for the defendant. The State Board sued  
out this writ to review that judgment.

40

At the trial it appeared that the defendant was

*Opinion of Supreme Court.*

a licensed chiropractor; that his place of business  
was in Arlington; that he had a reception room,  
a treating room and an electrical machine; that he  
prescribed a diet for various people, who testified  
as witnesses, and gave them salts to take inwardly;  
that he gave them oxy christine into which, accord-  
ing to the witnesses, but denied by him, he said  
that he had put some other ingredients; that he  
also gave the witnesses electrical treatments using  
an electric vibrator attached to an electric ma-  
chine; that he sometimes used an electric lamp  
which he held close to the various parts of the  
body until they became very warm, and that the  
witnesses paid him for these treatments.

10

Whether or not the defendant prescribed or  
gave medicines was manifestly in dispute in the  
evidence, and the judgment, therefore, cannot be  
disturbed on that ground. But beyond dispute he  
did give electrical treatments for various ailments.  
So far as this court is concerned we are bound to  
hold that in so doing he exceeded his authority  
under the statute. See State Board of Medical  
Examiners *v.* Lezenby, 1 N. J. Misc. Rep. 20, in  
which it was held that the giving of electrical  
treatments was a violation of the State Medical Act,  
and a judgment in favor of the accused was re-  
versed.

20

30

In the case at bar the defendant seeks to evade  
the effect of that decision by calling attention to  
the provision of the Medical Act as amended by  
P. L. 1921, page 707, which exempts therefrom any  
person resident of this state "who has been con-  
tinuously engaged in giving treatment by electricity  
herein during the past fourteen years; provided  
that said person has graduated from a legally in-  
corporated electro-therapeutic school in good  
standing."

40

Notice of Appeal.

10 We think the answer to the contention of the accused that he is excused by virtue of the language quoted is that, as we read it, there is no evidence in the case that he *continuously* was engaged in giving treatment by electricity *in this state* during the past fourteen years, and certainly none that he was such a graduate as the statute described.

The judgment will be reversed and the cause remitted for a new trial.

Notice of Appeal.

NEW JERSEY SUPREME COURT.

20 STATE BOARD OF MEDICAL EXAMINERS OF NEW JERSEY,  
*Prosecutor-in-Certiorari,*  
*Appellee,*

v.

HENRY P. LIVESEY,  
*Defendant-in-Certiorari,*  
*Appellant.*

30 To the State Board of Medical Examiners:

TAKE NOTICE that the above named Henry P. Livesey appeals to the Court of Errors and Appeals from the judgment of the Supreme Court granting a new trial in favor of the State Board of Medical Examiners for the reason that the Supreme Court committed error in setting aside the verdict of the Trial Court in favor of Henry P. Livesey, instead of finding in favor of Henry P. Livesey.

40

ELMER W. ROMINE,  
Attorney for Appellant.

69

New Jersey Court of Errors and Appeals

STATE BOARD OF MEDICAL EXAMINERS OF NEW JERSEY,  
Complainant-Appellee,

vs.

HENRY P. LIVESEY,  
Defendant-Appellant.

BRIEF OF APPELLANT.

Preliminary Statement.

The Medical Board filed complaint in the District Court of Jersey City against Henry P. Livesey, a licensed chiropractor, charging that he held himself out as being able to treat, operate and prescribe for human diseases and thereby practiced medicine and surgery without a license.

After considering the evidence the District Court concluded that the practices pursued by Doctor Livesey were within his rights as a licensed chiropractor.

Upon review by certiorari taken by the Medical Board to the Supreme Court the judgment in favor of Doctor Livesey was reversed, the Supreme Court holding that the use of electricity constituted the practice of medicine and surgery. It is from this finding of the Supreme Court that appeal has been taken by Doctor Livesey.

### Facts.

Doctor Henry P. Livesey, appellant herein, is a duly licensed chiropractor of this State, having received his license to practice November 24th, 1920 (Exhibit D-1, page 29).

The complaint was indefinite, merely quoting the language of the statute, without setting forth the facts or acts actually done as constituting the practicing of medicine and surgery. Objection was made at the trial to this form of complaint (pages 9 to 12).

As an adjunct to adjustments and manipulation and to aid in making treatments respond more readily it was suggested by Doctor Livesey that patients use a common household remedy of epsom salts, or take as a laxative oxy christine. These could be purchased anywhere without prescriptions.

Although the Medical Board endeavored to characterize such as "medicines" no proof was offered by any person as an authority that such common remedies were in fact medicine, and as the Supreme Court held (page 43):

"Whether or not the defendant prescribed or gave medicines was manifestly in dispute in the evidence, and the judgment, therefore, cannot be disturbed on that ground."

Blood pressure was taken solely for the purpose of determining whether the patient was in a condition of health to undergo chiropractic adjustments (page 30). This was a matter both of safety to the practitioner as well the patient and a means of diagnosis only.

In addition thereto and that which seemed to give rise for the reversal of the judgment of the

District Court, was the use of a common vibrator propelled by electric power (page 13) used and applied in conjunction with hand pressure, to quote the exact words of Doctor Livesey, (page 31, line 9) "such as you use in massage, in massage parlors, beauty shops, etc.". *Its object being to "release the contraction of muscles and stimulate the circulation."*

Doctor Livesey, aside from being a licensed chiropractor, has used electric appliances in conjunction with treatments and practiced electro-therapeutics for over twenty years (page 31).

### POINTS FOR DISCUSSION.

1. **The Medical Law can only apply to those who actually practice medicine and surgery.**
2. **The complaint is defective.**
3. **Doctor Livesey in his treatments was within his rights as a licensed chiropractor.**
4. **The defendant had legal right to give treatments by electricity.**

## ARGUMENT.

### I.

#### **The Medical Law can only apply to those who actually practice medicine and surgery.**

Insistment is made that the Medical Act is limited in its title. The title of the Medical Act reads as follows:

“An Act to regulate the practice of medicine and surgery to license physicians and surgeons and to punish persons violating the provision thereof.” (P. L. 1894, page 456).

It has been repeatedly held by our courts that the objects of the act must be expressed in the title of the act in order to have legal effect. Paragraph four of Section Seven of the New Jersey Constitution as amended in September, 1897, reads as follows:

“To avoid improper influences which may result from mixing in one and the same act, such things as have no proper relation to each other, *every law shall embrace but one object, and that shall be expressed in the title.*”

It was held in *Wilson v. Smith*, 79 Atl. page 272, that a latter and separate act which does not express in its title a legislative intent to fix the method of selecting officers and there being a prior and different act or statute which prescribes such method of selection, *the latter act which fails to so express the object in its title cannot affect or take precedence over the other and is inoperative and unconstitutional.*

It was held by the Supreme Court in *Patterson v. Close*, 82 Law, page 160 at page 162, that:

“In order to make the Legislation valid the title must be broad enough to express the general object sought to be accomplished; and under the constitutional provision referred to the title is not only an indication of the legislative intent, BUT IS ALSO A RESTRICTION UPON THE ENACTING PART OF THE LAW.” See *Hendrickson v. Fries*, Court of Errors and Appeals, 45 Law, page 555 at page 563.

In *Dobbins v. North Hampton*, reported in 50 Law, page 496, it was held by the court as follows:

“The constitutional mandate that the object of every law be expressed in its title has given the title of an act a two-fold effect. It has added additional force to the title as an indication of legislative intent in aid of the construction of a statute couched, in language of doubtful import, and it also operates as a constitutional limitation upon the enacting part of the law. ‘The enacting part of a statute however clearly expressed can have no effect beyond the object expressed in the title. To maintain any part of such a statute, those portions not embraced within the perview of the title must be excised; and if, the super-addition to the declared object cannot be separated and rejected the entire act must fail.’”

The Medical Act here under discussion comes within the limitation placed upon legislative acts by our Constitution and decisions of the court.

The manifest purpose and object of the Medical Act as originally enacted by the Legislature in 1894, was to protect the medical profession against quack medical practitioners, that is persons who professed or attempted to administer

drugs and medicines as a cure and who were not licensed so to do and in order to substantiate this view the court is directed to Section Eight of the Medical Act of 1894 as contained in Volume 3 Compiled Statutes, page 3332, wherein it was provided that any person shall be regarded as practicing medicine and surgery who among other things "shall prescribe, direct, recommend, advise, apply, give or sell, for the use of any person or persons, *any drug or medicine or other agency or application for treatment, cure or relief of any bodily injury, infirmity or disease.*"

This Act was interpreted by the Supreme Court in the case of the State v. Herring, reported in 70 Law, page 34, the decision being by Justice Dixon, wherein it was held:

"An Osteopathic Physician whose treatment of his patient consists simply of the manipulation of the body, does not violate that provision of the act of May 22nd, 1894. (Compiled Statutes, Volume 3, page 3332), which forbids the applying of any drug, medicine or other agency or application by an unlicensed person."

The purport of this decision clearly indicates that in the mind of the court the Medical Act of 1894 was limited to those only who attempted to practice medicine and surgery in the common and usual manner in which medicine and surgery was practiced, namely, by the giving, offering or prescribing of drugs and medicines or the performing of surgical operations. Further by the enactment of this legislation there was apparently no occasion for including any other person or of prohibiting the practice of medicine and surgery by any person other than those who attempted to give drugs or medicines without a license and therefore the title of the act was so limited and circumscrib-

ed. The "persons mentioned and referred to being intended to include only those, who, without license, attempted or did prescribe or give drugs or medicines.

In 1915 the Legislature attempted to enlarge the provision of Section Eight of the original Medical Act without repealing the Medical Act or enlarging the title, by providing among other things that any person shall be regarded as practicing medicine and surgery who holds himself or herself out as being able to diagnose, treat, operate or prescribe for any human disease, injury, deformity, or physical condition, or who shall either offer or undertake by any means or methods to diagnose, treat, operate or prescribe for any human disease, injury, deformity or physical condition.

It will be noted that in the amendment the limitation to the use of "drugs and medicines" is eliminated and a general clause inserted in the place thereof.

If the intendment of the Legislature was by this amendment and enlargement to include those persons who afforded relief by drugless methods such as massage, application of heat, or the adjustment of the spine, or other parts of the body, as the practice of medicine and surgery, it is submitted first, that such could not be done because such objects were not fully expressed or comprehended in the title of the Medical Act and secondly because such form of treatment was not clearly expressed as being intended to be prohibited by this section. It would be going outside of the realm of medicine and surgery to include some other method or form of treatment.

It is further urged that the language of Section Eight of the Medical Act as amended in P. L. 1915, page 482, prohibiting any person from diagnosing, treating, operating and prescribing for hu-

man diseases without being licensed to practice medicine and surgery, by its very terms excludes all other forms of healing and was intended to apply only to those who attempted to practice medicine and surgery without a license, in other words the legislative definition in the Medical Act could not by the limited terms of the Act and especially the title include any form of treatment other than Medicine and Surgery as such is commonly known and practiced.

It is further insisted that the phrases in Section Eight as amended in P. L. 1915, is of no more legal effect than the original act, criticism of which was made in *State v. Harring, supra*, by Justice Dixon.

It was also held in *Moore v. State*, 43 L. 203, by opinion of Justice Dixon:

“There is no rule of interpretation more inflexibly established than that where language is used after it has received a judicial construction, it must be understood strictly in the sense which the courts had previously given it.”

In the case of *Peer v. Dixon*, 83 L. 366, we have somewhat of an analogous principle which might apply with propriety to the situation under discussion.

There the court was construing words “or elsewhere” in an ordinance and the court adhered to the view that the words “or elsewhere” would be that it included any other public place of like character and not private property.

Applying this reasoning to the case at bar it could well be said that the words in the Medical Act “any persons” and “by any means or methods” could go no further than to include any other persons of like character, namely, medical men or

those who practice medicine and surgery by the use of drugs and medicines.

The definition attempted to be given of the practice of medicine and surgery by Section Eight of the Medical Act, Chapter 271, page 482, must be limited to medical practitioners, because should it be applied as in its general terms it would lead to absurdity, for it would include demarticians, hair dressers, etc., also all those who might suggest cure for existing ailments.

According to a recognized definition “drugs” is an ingredient in medicine, a narcotic, an unsalable article except by prescription. “Medicine” is defined by one of the standard medical dictionaries as synonymous with drugs and is the science of healing with the use of drugs, a drug or medicinal preparation.

The late Thomas McCran, as Attorney General, on November 5th, 1921, gave a written opinion to the Medical Board in which he said:

“The cardinal rule in the construction of legislative acts is that words in common use are to be taken in their ordinary significance.” Citing *Evening Journal Association v. State Board of Assessors*, 47 Law page 36.

Chiropractors were licensed under a separate act, P. L. 1920, page 17, and the Medical Board have no jurisdiction over licensed chiropractors. They are by law authorized to treat human ailments and diseases, and if they do so by methods that do not involve the use of drugs and medicines, which are peculiar to the practice of medicine and surgery, the Medical Board cannot complain and they have no jurisdiction or right to complain against a licensed chiropractor, or to attempt to construe his practices to be that of medicine and surgery.

Construing a similar statute to that of New Jersey, the Supreme Court of North Carolina in *State v. Biggs*, 46 Southeastern, page 401, held that the purpose of a statute regulating the practice of medicine and surgery was to protect the public against quack medical practitioners who use drugs and medicines in treating diseases.

Also in *Bennett v. Ware*, 61 S. E. page 546, commenting on the Medical Act, it was held that such a statute which attempted to regulate the practice of those who treated by drugless methods was an attempt to confer a monopoly on the method of treatment by the Medical Board and not a legitimate exercise of the police power.

It is, therefore, respectfully submitted that under the law governing the practice of medicine and surgery, limited as it is in the title of the act to those who practice medicine and surgery only without a license, that the right to complain against Doctor Livesey is not within the purview of the Medical Act under the circumstances of this case.

## II.

### (A) The Complaint is defective.

The complaint will be found on page 5 of the State of Case. It will be noted on reading the complaint that it charges merely that:

“Henry P. Livesey at the time and place aforesaid, did commence and continue the practice of medicine and surgery without first having obtained and filed a license for such practice issued by the State Board of Medical Examiners of New Jersey, as provided for under the provisions of said act,

in that the said Henry P. Livesey at the time and place aforesaid, did hold himself out as being able to diagnose, treat, operate and prescribe for human diseases, pains and physical conditions, and did offer and undertake to treat, operate and prescribe for human diseases, pains, injuries, deformities and physical conditions, *and did at the time and place aforesaid treat and prescribe for the same*, all of which is contrary to and in violation of said Section Ten of said act and against the form of said statute.”

It will be noted that the complaint merely recites the general language of the statute, Sec. 8, P. L. 1915, *without setting forth the facts or what the defendant actually did* which it was claimed constituted a violation of the Medical Act so that the defendant would know what he was called upon to meet.

Under the amendment of the Medical Act, Chapter 221, P. L. 1921, page 702 at page 709, the Legislature declared that in all violations of the Medical Act “*the court shall proceed in a summary manner.*”

Justice Lloyd in *State Board v. Buettel*, 131 Atl. p. 89 held that violations of the Medical Act were governed by proceedings laid down in summary cases also *State Board v. Roche*, 132 Atl. p. 86.

It has been repeatedly held in cases of summary proceedings that the complaint must set forth facts so that the defendant may know what he is called upon to meet.

It may be insisted on behalf of the complainant-appellee that this being a quasi-criminal proceeding that it was not necessary to do more than charge in the words of the statute, but the Court of Errors and Appeals in the case of *Linden Park Horse Association v. State*, reported in 55 Law,

page 557, has stated otherwise in the following language:

"The crucial test of the inquiry obviously is whether the specifications of the acts that constitute the house a disorderly one are necessary parts of the charge. That they are such is demonstrably clear. No one with any knowledge of law would say that a general charge of keeping a disorderly house without any indication of the circumstances that make it such would satisfy the legal rule of criminal pleading."

For the reason stated by the court in the cited case the conviction was set aside.

Reverting further to the case of *State v. Hatfield*, reported in 87 Law, page 124, Justice Kalisch, speaking for the Supreme Court, held:

"The pleader should have set out the facts from which it would be made to appear that the science practiced by the prosecutor came within the term of crafty science, as intended for the act. If the pleader relied on the practice of astrology to prove the prosecutor a disorderly person, and to which it appears the proof in the case was solely directed, it should have been so charged in the complaint and its omission therefrom is fatal." Citing *Linden Park Horse Association v. State*, 55 Law, 557.

Reverting also to that class of case referred to as summary in nature dealing with the violation of an ordinance, we find also that our courts have adhered to the same rule of pleading as above cited. In the case of *Peer v. Dixon*, reported in 82 Law, page 366, wherein the court held the rule to be:

"It was necessary to the validity of the complaint that it should show upon its face

that the place where the profane and obscene language was used was a public place. For it is the public character of the place where the obscene or profane language is used which makes the use of such language an offense within the meaning of the ordinance. *The complaint fails in this regard.*"

Again, in the case of *Tanner v. Town of Morristown*, being unreported decision by the Supreme Court in 1916, it was held:

"*The facts should be set out so that the accused may know what he is called upon to meet.*"

In a recent case decided by the Supreme Court, that of *MacEvoy against Bennell and Betts*, 1 Misc. Rep. page 76, which was a case under review for alleged violation of the Motor Vehicle Act, the court said in disposing of the objection to the complaint:

"It will be observed that the complaint does not set forth any violation of speed by the prosecutor at the time of the accident. It embodies the proviso of the act as above quoted. *We deem the complaint faulty in that it does not set forth in what particulars the prosecutor was at the time of the accident violating the provisions of the act.* Upon this ground the conviction for reckless driving will be set aside."

It may be further argued on behalf of the Medical Board that under the amendment to the Medical Act in 1921 it was not necessary to file any pleadings, but the Supreme Court clearly held in the case of *Watt v. Wallerius*, decided March 12th, 1924, 123 Atl. p. 723, that although Section Thirty-Two of the Motor Vehicle Act provided for an arrest without warrant and the bringing of a person before a magistrate where he shall be detained

until the officer making the arrest shall make oath or affirmation, meant that such complaint must be in writing, although Section Thirty-One, Paragraph 1, Chapter 208, P. L. 1921, provided that no written complaint need be made.

It may be suggested by the Medical Board that under the case of *Lowrie v. State Board of Dentistry*, reported in 90 Law, page 54, that the question has already been decided by the Supreme Court, but a reference to that case would indicate that the objection there was as to the failure to charge definite and specific time when, place where, and person upon whom the defendant practiced dentistry.

The objection raised under this point does not go to the time or place or person, but criticizes the complaint because it does not set forth the things which are alleged to have been done as being fatal.

Whether or not there was any legal requirement for the actual filing of a complaint, the fact that the Medical Board did file a complaint makes it necessary for the Board to comply with the requirements as laid down in the cases that the facts must be clearly set forth, and for the failure of so to do it is submitted that no legal judgment could be sustained under such a form of complaint.

**(B) There could be no conviction under the complaint.**

The complaint as filed (page 5) merely charged that "Henry P. Livesey did hold himself out as being able to diagnose, treat, operate and prescribe for human diseases, pains and physical conditions."

*Doctor Livesey being a licensed chiropractor,*

*therefore, had the right to diagnose, treat, operate and prescribe for human diseases, pains and physical conditions, so long as he did not use drugs or medicines or perform surgical operations in connection therewith.*

Under the limited charge of the complaint, coupled with the fact that defendant was a *duly licensed chiropractor*, the trial court could not convict him for doing what the complaint charged as he was within his legal rights, for his treatments were by drugless methods and not by means of drugs and medicines.

The action of the Supreme Court in reversing the finding in favor of defendant was manifest error.

**III.**

**Doctor Livesey in his treatments was within his rights as a licensed chiropractor.**

The defendant was licensed as a chiropractor by authority of the provisions of Chapter 4, P. L. 1920 (certificate of license admitted in evidence and marked D-1, page 29, line 40).

The term "chiropractic" as used in the statute is as follows:

"The term chiropractic when used in this act shall be construed to mean and be the name given to the study and application of a universal philosophy of biology, theology, theosophy, health, disease, death, the science of the cause of disease and art of permitting the restoration of the triune relationships between all attributes necessary to normal composite forms, to harmonious quantities and qualities by placing in juxtaposition the abnormal concrete positions of definite

mechanical portions with each other by hand, thus correcting all subluxations of the articulations of the spinal column, for the purpose of permitting the recreation of all normal cyclic currents through nerves that were formerly not permitted to be transmitted, through impingement, but have not assumed their normal size and capacity for conduction as they emanate through intervertebral foramina—the expressions of which were formerly excessive or partially lacking—named disease.”

It will be noted that the definition of chiropractic is very broad, being the name “given to the study and application of a universal philosophy of biology, theology, theosophy, health and disease.”

Biology is a comprehensive term for those departments of science that treat living beings. It comprehends physiology.

Physiology is defined to be the doctrine or science of nature. It embodies natural methods, such as bath, heat, sunlight, and such methods as give the required stimulus by artificial means; it embraces philosophy, chemistry, astronomy, zoology and geology. As finally understood it is the science of the different functions of which life is the manifestation, in other words, circulation, respiration, sensation, nutrition, excretion and the like.

Chiropractic is the science which teaches that the body must be kept clean, pure, and free from impairment of circulation or interference with nerve impulses. It is a means, by drugless methods, of freeing the body from disease. It is a basic principle adhered to by all chiropractic practitioners and demonstrated throughout years of actual practice that all diseases and disorganizations of the body are due to subluxations of the

spinal column which tend to cause an impingement of the nerve area.

With chiropractors the spinal column is divided into a series of dorsal vertebrae, each series containing certain nerves that control certain specific organs and parts of the body. In order for a chiropractor to determine fully what part of the spine needs adjustment besides the palpating diagnosis it is necessary to inquire from the patients their general condition, and in a way make a diagnosis of conditions.

The Chiropractic Act of 1920, at page 17, Section Five, therefore prescribes an extensive examination of persons desiring to be admitted to practice and become licensed as chiropractors, including the following subjects: anatomy, physiology, symptomatology, *diagnosis of disease*, hygiene, chiropractic, orthopedic, astrology, neurology, and principles of chiropractic, and the applicant shall further be required to give a clinical demonstration of vertebral palpation and adjusting.

Therefore, by the intendment of the Legislature applicants were required to evidence knowledge, skill and ability in the *history of diseases, symptoms and diagnosis*.

It would be drawing the line too close to say that a chiropractic physician could only use his hands in the manipulation of the spine, while the theory of chiropractic is to remove subluxations which cause impingement in the nerve area and thereby give relief to the various disorganizations of the body so nature may take its course; nevertheless, certain systems of the body, while such treatments are being given, must be kept pure and unadulterated, otherwise the blood stream becomes effected and toxic poisons gather which retard the result of such treatments.

The only difference between chiropractic and

the practice of medicine is that chiropractors seek to bring about a normal and healthy condition in the body by certain drugless methods, manipulations and adjustments, *without the use of drugs*, while on the other hand the medical practitioner *gives drugs or medicines* as a narcotic to relieve and create insensibility to pain until nature shall have been able in its due processes to bring about a healthy condition.

Nowhere in the Medical Acts from the time of their inception in 1772 down to the present date is there any statutory definition of what constitutes the practice of medicine and surgery. It is generally understood, however, to mean what the words in their natural import imply, *namely, the giving of drugs or medicines such as cannot be acquired without prescription and the performing of surgical operations*. The last Medical Act of 1894, with its various supplements and amendments, provides, as does the chiropractic act, that those who desire to become licensed are to be examined in certain subjects; those which apply to the practice of medicine and surgery include materia medica and therapeutics, obstetrics and gynecology, practice of medicine, surgery and surgical anatomy, physiology, chemistry, histology and pathology.

There is very little difference in the subjects for examination between those who seek to practice medicine and those who desire to become licensed as chiropractors. Both classes have to submit to examinations in anatomy, physiology, diagnosis of disease, hygiene and histology. The medical man to take further examinations in materia medica and surgery, and the chiropractor to take further examinations in chiropractic and in the adaptability to give adjustments and palpation.

To maintain that a chiropractor could not diagnose and determine the location of the disease or

disorganization of the body would be just as absurd as to say that because the Medical Act does not go into details as to that right, that the medical man could not diagnose or determine the cause of disease before giving his form of treatment in the nature of medicines, drugs or surgical operations.

The Chiropractic Act when read in its entirety admits and comprehends the right of the licensed chiropractor to diagnose nature and cause of disease and ailment.

Then again it must be admitted that since the advent of the Medical Acts and the Chiropractic Acts each of the sciences of healing have developed in their particular art and manner of application for the treatment of diseases.

*Nowhere in the Medical Act is there any provision requiring those who seek to become licensed as medical practitioners to take an examination in electro-therapeutics or the use of electricity in the treatment of diseases*, and yet medical practitioners almost universally have adopted this new science or method in conjunction with their general practice of medicine.

Nowhere in any act of the Legislature can we find any provision or requirement for an examination before a practitioner can use electricity. There is no clause in any of the Medical Acts which gives to the medical practitioner the exclusive right to use the general commodity of electricity. He merely assumes the right under the designation "medicine and surgery."

The chiropractor has also found that in the practice of his profession the use of electricity, which every householder uses to propel motors and machinery, may be used to propel a vibrator or some other device in conjunction with the use

of his hands, which is an aid or an adjunct to his hand manipulation.

The vibrator for instance, a mechanical device that can be purchased by anyone at any electric store or drug store, or through the advertisements of any magazine, without prescription, is used by many chiropractors and was used by Doctor Livesey in conjunction with his hand pressure and manipulation to increase the circulation and give life and vigor to muscles and nerves. The chiropractor could, and formerly did, in conjunction with his adjustments and manipulations, massage with his hands various parts of the body. The use of a vibrator is merely a mechanical device which in a way takes the place of hand manipulation, and is a drugless method of accomplishing results.

Is it therefore legitimate and fair that medical practitioners can use such ordinary household remedies, *that anyone may use without prescription*, under a limited license to practice medicine and surgery without any legislative enactment giving the sole right to them, and on the other hand to say to the licensed chiropractic physician that he cannot use such things as an adjunct to and in conjunction with hand manipulation. It would seem to be an unfair discrimination comparing the respective rights of the practitioners.

The Supreme Court in deciding the question adverse to the now present appellant said (page 43):

“But beyond dispute he (meaning Doctor Livesey) did give electrical treatments for various ailments. So far as this court is concerned we are bound to hold that in so doing he exceeded his authority under the statute.”

See State Board of Medical Examiners v. Lezenby, 1 N. J. Misc. Rep. 20, in which it was held that the giving of electrical treatments was a vio-

lation of the State Medical Act, and a judgment in favor of the accused was reversed.

The Supreme Court seemed to be guided by its decision in the Lezenby case, but a reference to the record of that case as filed in the Supreme Court Clerk's Office, and a copy of the testimony returned with the papers, shows that Lezenby did not profess to be a doctor and that he was not licensed as a medical man, chiropractor or osteopath. In other words, Lezenby professed to treat diseases by some method in connection with the use of electricity without being licensed to treat human diseases in any form.

It will be further noted that the Supreme Court was in error in the statement that Doctor Livesey treated diseases by electricity. There was nothing in the record to indicate such. At most, all he did was to use electric power for the purpose of propelling a vibrator, no electricity going into the body and no treatment being by electricity direct to the body.

We think that what the Supreme Court had in mind in the Lezenby case was that the actual treatment, by whatever method it may have been, without being licensed was the controlling factor that made Lezenby amenable to the literal terms of the Medical Act. Here we have a situation entirely different. *Doctor Livesey was licensed to treat human diseases*, for which he could not be penalized or have been guilty of any wrongdoing, and if he saw fit to use any mechanical device in connection with his hand manipulation and in his treatment did not give or prescribe any medicines or drugs or perform any surgical operations, he could not come within the perview of the Medical Act or be subject to any of its penalties.

Doctor Livesey explained that he took blood pressure (page 30-11) to ascertain the condition

of the patients, that is, whether they were in proper physical condition to undergo chiropractic treatments.

*It was one of his methods of diagnosis.*

This was not a treatment by electricity, and as already pointed out, as a drugless practitioner he had the right to make a diagnosis, and a course which should be commended rather than discouraged.

We think that the trial court in disposing of the complaint arrived at a logical and reasonable conclusion, and in summing up the argument under this point we wish to conclude with the statements of the trial court as found on page 34 of the case, as follows:

"It is evidently the purpose of the statute to prevent persons who are licensed as chiropractors or any particular line, from holding themselves out and doing things which only physicians and surgeons should do. *It seems to me these remedies which were used were as an adjunct to this chiropractic procedure, were merely household remedies or remedies which at any rate are not peculiar to the practice of medicine and surgery.*

"I presume that any use of any ordinary stimulant or any internal drink might, in a sense, be spoken of as medicine, but I don't think that when the statute speaks of the practice of medicine and surgery, means that the use of ordinary salts which are household remedies, that anybody can use, is practicing medicine."

We submit in conclusion of argument under this point that a licensed chiropractor has the right to use in conjunction with his hand manipulation such devices and methods as were done by Doctor Livesey in the fulfillment of his practice as a chiropractor and for that reason the Supreme Court was in error in concluding that its finding in the Lezenby case applied to a licensed chiropractic practitioner.

#### IV.

##### **The defendant had legal right to give treatments by electricity.**

Claim is made that a vibrator propelled by electricity was used on one of the witnesses for the Board (page 16).

It was also claimed that a light was applied close to the body.

As to the use of the light, Doctor Livesey denies its use (page 31, line 21). There being a disputed question of fact as to whether a light was used, and the court having decided in favor of Doctor Livesey, under the ruling of the Supreme Court in this case that question of fact cannot be reviewed or further dealt with.

The Medical Act in the latter part of the exemption provision at page 708, laws of 1921, exempted any

"Professional nurse, masseur or electrician while operating in each particular case under the specific direction of a regularly licensed physician or surgeon."

A chiropractor is as much a physician as a medical practitioner. This clause was intended to cover *all classes of "physicians"* because prior in the statute when reference is made especially to the medical practitioners, the term used is physicians and surgeons, a compound word so to speak meaning one and the same person, whereas in the clause above referred to it is intended to distinguish between the two by the phrase "*physician or surgeon*".

Further, in the opinion of Attorney General McCran to the Medical Board, November 5th, 1921, he said:

"The words 'practice of medicine' as de-

fined in Chapter 271, P. L. 1915, and used in their ordinary sense mean 'physicians'. Therefore, any person holding a valid license under Chapter 4, P. L. 1920 (Chiropractic Act) is authorized to practice medicine by the means of methods therein provided for and within the meaning thereof. *Such a person then is a physician.*" \* \* \* "The law requires that the death certificate shall be signed by the *Physician*, if any, last in attendance. If, then, the person last in attendance *be a chiropractor authorized to practice medicine within the limitations of Chapter 4, P. L. 1920* \* \* \* then such person would be *the physician last in attendance.*"

Whether or not the rights of Doctor Livesey to use electricity generally in the treatment of diseases is established under the law and the arguments advanced under this point, it seems clear that his use of a vibrator as more fully discussed under the previous point, was such as could be permitted as an adjunct or aid to in conjunction with his hand manipulation, and being a licensed Chiropractic Physician was exempted and for these reasons he could not be subjected to a penalty for having practiced medicine and surgery when he did not use drugs or medicines or attempt to encroach in any way upon practices peculiar to or solely within the province of the medical practitioner.

**The judgment of the Supreme Court should, therefore, be reversed to the end that the findings of the District Court may be affirmed.**

Respectfully submitted,

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Attorney and Counsel for  
Defendant-Appellant.

## New Jersey Court of Errors and Appeals

STATE BOARD OF MEDICAL EXAMINERS OF NEW JERSEY, <i>Complainant-Appellee,</i>	}	<i>Brief for the Complainant- Appellee</i>	10
vs.			
HENRY P. LIVESEY, <i>Defendant-Appellant.</i>			

### FACTS

The defendant-appellant in this case was charged with the practice of medicine and surgery, without a license. The case was tried on January 11, 1927, before the First District Court of the City of Jersey City and that Court, at the conclusion of the testimony, found the defendant-appellant not guilty. The complainant-appellee then sued out a writ of certiorari and the Supreme Court reversed the judgment of the District Court. This appeal is taken to review the decision of the Supreme Court. 20

The defendant-appellant is a licensed chiropractor in this State. Substantially all the facts proven by the complainant-appellant are undisputed. The record in this case, therefore, raises the question of whether a licensed chiropractor has the authority under his license to commit the acts complained of. 30

Counsel for the defendant-appellant in his brief (p. 3) raises four points for discussion and they will be argued in their order here. 40

ARGUMENT

I

The Medical Act Applies to Those Who actually practice Medicine and Surgery as that Offense is defined in the Statute.

The defendant-appellant was charged with the violation of section 10, Chapter 221, P. L. 1921. Section 10 in part provides:

"Any person hereafter commencing or continuing the practice of medicine and surgery in any of its branches in this State without first having obtained and filed the license herein provided for, or contrary to any of the provisions of this act \* \* \* shall be liable to a penalty of \$200."

The title of the act (3 Comp. Stat. 3329; P. L. 1894, P. 454) is "An act to regulate the practice of medicine and surgery, to license physicians and surgeons and to punish persons violating the provisions thereof."

The statutory offense—the practice of medicine and surgery without a license—is defined in the Act of 1894 (3 Comp. Stat. 3332) as follows:

"That any person shall be regarded as practicing medicine or surgery, within the meaning of this act who shall use the words or letters 'Dr.', 'Doctor,' 'Professor,' 'M.D.,' or 'M.B.' in connection with his or her name, or any other title intending to imply or designate him or her as a practitioner of medicine or surgery in any of its branches, and who in connection with such title or titles or without the use of such titles, shall prescribe, direct, recommend, advise, apply, give or sell, for the use of any person or persons, any drug or medicine or other agency or application for the treatment, cure or relief of any bodily injury, infirmity or disease; and it is further provided that the use of any one of the aforementioned titles or the exposure of a

sign, circular, advertisement or any other device or information, indicating thereby the occupation of the person or persons, shall be considered prima facie evidence; and it is further provided that the provisions of this act shall apply to all persons professing and attempting to cure diseases by means of the so-called system of 'faithcurism,' 'mind-healing,' 'laying-on-of-hands,' and other similar systems."

The Legislature later (P.L. 1915, P. 482; Comp. Stat. 1st Supp. 951) amended the definition in the Act of 1894 and defined the statutory offense of the practice of medicine and surgery without a license as follows:

"Any person shall be regarded as practicing medicine and surgery, within the meaning of this act, who shall use the words or letters 'Dr.,' 'Doctor,' 'Professor,' 'M.D.,' or 'M.B.,' in connection with his or her name, or any other title intending to imply or designate him or her as a practitioner of medicine or surgery in any of its branches, and who, in connection with such title or titles, or without the use of such titles, or any of them, holds himself or herself out as being able to diagnose, treat, operate or prescribe for any human disease, pain, injury, deformity or physical condition, or who shall either offer or undertake by any means or methods to diagnose, treat, operate or prescribe for any human disease, pain, injury, deformity or physical condition; and it is further provided, that the provisions of this act shall apply to all persons professing and attempting to cure diseases by means of the so-called system of 'faithcurism,' 'mind-healing,' 'laying-on-of-hands,' and other similar systems."

The method of treatment used by the defendant-appellant was what is commonly known as chiropractic treatments. The claim is here made that no person can be found guilty of a violation of the act unless it be shown that they applied or gave drugs and medicines.

The defendant-appellant relies upon the Act of

1894 (3 Comp. Stat. 3332). He argues that the Act of 1915, defining the practice of medicine and surgery, does not apply to the acts committed by him and proven in this case. Counsel cites a number of cases in his brief in an attempt to show that the subject matter of the statute is broader than the title of the act. He attempts to raise the proposition that an act cannot be broader than its title. The fallacy of this position is plain. The offense of practicing medicine and surgery is not a common law offense. It is a statutory offense. It is a police regulation; a regulation in the interest of the protection of the people of the State. It being a statutory offense created by the Legislature, the Legislature has a clear and legal right to define that offense. It did so originally in the Act of 1894. Later, as conditions changed they amended the Act of 1894 and again defined the practice of medicine in the Act of 1915. In defining the offense of practicing medicine and surgery without a license, the Legislature distinctly provided in the Act of 1915 that any person should be regarded as practicing medicine and surgery within the meaning of the act who used the words or letters "Dr.," and who in connection with such title held himself out as being able to diagnose, treat, operate or prescribe for any human disease, pain, injury, deformity or physical condition or who offered or undertook by any means or methods to diagnose, treat, operate or prescribe for any human disease, pain, injury, deformity or physical condition. The Legislature had a clear legal right to define the practice of medicine under the act.

*State, Ex Rel. Walter et al. v. Town of Union, in the County of Hudson, 33 N. J. L. 350.*

*Easton and Amboy R. R. Co. v. Central R. R. Co., 52 N. J. L. 267.*

*Smith v. Willetts, 81 N. J. L. 370.*

*Stagway v. Riker, 84 N. J. L. 201.*

*Shultise v. O'Neill, 85 N. J. L. 15.*

*Gillard v. Manufacturers Insurance Company of Philadelphia, 93 N. J. L. 215.*

The Supreme Court in the case of *State Board of Medical Examiners v. Johnson*, decided March 17, 1928, in discussing and passing upon the very point here raised said: 10

"The first point argued for the prosecutor is with reference to the denial of the motion referred to. The prosecutor insists that the medical act can only apply to those who actually practice medicine or surgery and that the amendments are unconstitutional because they have been extended to include offenses not embraced in the original act of 1894. We consider the title broad enough to include the offenses under the amendments to the act. As was said by Mr. Justice Van Syckle in the case of *State vs. Town of Union, 33 N. J. L. 350*; 20  
'The unity of the object must be sought in the end which the legislative act purposes to accomplish and not in the details provided to reach that end.' The same idea was expressed by Mr. Justice Garrison in *Moore v. Burdett, 62 N. J. L. 163*, when he said the title of an act was a label and not an index."

The Act of 1915 defining the practice of medicine and surgery being valid and legal, the only question remaining is whether the acts committed by the defendant-appellant come within its meaning. It is clear that they do and the Supreme Court has so held in other cases heretofore submitted and determined by it. 30

## II

### The Complaint is not Defective.

Chapter 221, P. L. 1921, Section 10 in part provides: 40

10 "Any person hereafter commencing or continuing the practice of medicine and surgery in any of its branches in this State without first having obtained and filed the license herein provided for, or contrary to any of the provisions of this act \* \* \* shall be liable to a penalty of \$200 \* \* \*. Every District Court in any city or judicial district in any county, and every Court of Common Pleas in any county is hereby empowered upon filing of a complaint in writing, duly verified, which said verification when made by any member of the said State Board of Medical Examiners of New Jersey, or by any member of any incorporated medical society of this State or of any county of this State, may be made upon information and belief, that any person has violated any provisions of this act to issue process at the suit of the State Board of Medical Examiners of New Jersey as plaintiff; such process shall be either in the nature of a summons or warrant, which warrant may issue without any order of the court or judge first being obtained against the person or persons so charged, which process, when in the nature of a warrant, shall be returnable forthwith, and when in the nature of a summons shall be returnable in not less than five or more than fifteen entire days; *such process shall state what provision of the law is alleged to have been violated by the defendant or defendants.*"

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The complaint (Case, p. 5) charges,

30 "one Henry P. Livesey of Arlington, in the County of Hudson and State of New Jersey, did violate section ten of an act of the Legislature of the State of New Jersey entitled 'An act to regulate the practice of medicine and surgery, to license physicians and surgeons and to punish persons violating the provisions thereof,' approved May twenty-second, one thousand eight hundred and ninety-four, as said section ten was amended by act approved April eighth, one thousand nine hundred and twenty-one in the following respect, to wit: that the said Henry P. Livesey at the time and place aforesaid, did commence and continue the practice of medicine and surgery without first having obtained and filed a license for such practice is-

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sued by the State Board of Medical Examiners of New Jersey, as provided for under the provisions of said act, in that the said Henry P. Livesey at the time and place aforesaid, did hold himself out as being able to diagnose, treat, operate and prescribe for human diseases, pains and physical conditions, and did offer and undertake to treat, operate and prescribe for human diseases, pains, injuries, deformities and physical conditions, and did at the time and place aforesaid treat and prescribe for the same, all of which is contrary to and in violation of said section ten of said act and against the form of said statute." 10

The complaint, therefore, follows the direction of the statute; namely, it charges the defendant-appellant with having violated a specific provision of the law—section ten of the act. In fact, the complaint goes beyond that, in that it alleges in part the way and manner in which the defendant-appellant has violated the act. The complaint, therefore, describes the offense in the language of the statute. 20

Our courts have held that in charging a statutory offense, it is sufficient to describe the offense in the words of the statute.

*State v. Thatcher*, 35 N. J. L. 445.

*State v. Halsted*, 39 N. J. L. 410.

*State v. Brand*, 77 N. J. L. 486.

*Lowrie v. State Board of Dentistry*, 90 N. J. L. 54. 30

*State v. Morris*, 98 N. J. L. 621.

In *State v. Brand*, *supra*, the opinion of the Court of Errors and Appeals was delivered by Chancellor Pitney who at page 487 said:

"The general rule is well established that in charging a statutory offense it is sufficient to lay the charge in the words of the act without a par-

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particular statement of the facts such as will bring the accused within its operation."

In *Lowrie v. State Board of Dentistry, supra*, Mr. Justice Swayze, speaking for the Supreme Court, at page 56 said:

10 "We think that when, as in this case, the offense is charged in the language of the statute it is not necessary to set forth in the complaint each specific instance that may be relied on as evidence of the practice. No reason is suggested why the ordinary rule sustaining that method of pleading statutory offenses is inapplicable."

In *State v. Morris, supra*, Mr. Justice Trenchard, speaking for the Supreme Court at page 623 said:

20 "The reason urged was to the effect that the counts were insufficient because indefinite. Not so. They each followed the language of the statute, and the rule is that an indictment for a statutory crime is sufficient if the offence be charged in the language of the statute."

Cases elsewhere support the same view.

*Payne v. State (Sup. Ct. Tenn)*, 79 S. W. 1025.

*Parks v. State*, 159 Ind. 211.

*State v. Martin (R. I.)*, 49 Atl. Rep. 497.

30 *State v. VanDoran (N. C.)*, 14 S. E. 32.

*People v. Phippen (Supreme Court of Michigan)* 37 N. W. 889.

The offense charged—the practice of medicine and surgery without a license—is a continuing one and is necessarily made up of a series of acts. Each isolated act tends to prove the practice but may not constitute in itself the prohibited offense.  
40 To set out all of the acts constituting the offense

would be the same as submitting the proof of the offense in advance of the trial. This the complainant-appellee is not bound to do. The complaint, therefore comes within the settled rule of law in pleading statutory offenses.

### III

#### The Defendant-Appellant was not within His Rights in Committing the Acts Complained of. 10

Chapter 4, P. L. 1920, defines the practice of chiropractic as follows:

"The term chiropractic when used in this act shall be construed to mean and be the name given to the study and application of a universal philosophy of biology, theology, theosophy, health, disease, death, the science of the cause of disease and art of permitting the restoration of the triune relationships between all attributes necessary to normal composite forms, to harmonious quantities and qualities by placing in juxtaposition the abnormal concrete positions of definite mechanical portions with each other by hand, thus correcting all subluxations of the articulations of the spinal column, for the purpose of permitting the recreation of all normal cyclic currents through nerves that were formerly not permitted to be transmitted, through impingement, but have now assumed their normal size and capacity for conduction as they emanate through intervertebral foramina—the expression of which were formerly excessive or partially lacking —named disease." 20 30

Our courts have not construed this act, but the language is clear to the effect that the practice of chiropractic is limited to the manipulation of the spinal column by hand. Authorities elsewhere support this view.

In *State v. Gallagher*, 143 S. W. 98, the Court said:

"Chiropractic is derived from the Greek, and 40

means mechanical, to do by hand; hand manipulation. Webster's New International Dictionary defines 'chiropractic' to be a system of healing that treats diseases by manipulation of the spinal column."

To the same effect is *State v. Johnson*, 114 Pac. 390 (84 Kas. 411).

10 The practice of chiropractic is an offense unknown to the Common Law and the authority to practice it is defined by statute. The statute is penal and therefore must be strictly construed. The licensee can only do that which the statute permits him to do. Under this act he is limited to the treatment of the spinal column by the use of his hands. Acts outside of the express limitation are unlawful if such acts are in violation of the provisions of the act regulating the practice of medicine and surgery.

20 The defendant-appellant's place of business is located in Arlington, Hudson County, New Jersey. He had a reception room, a treating room in which were a leather treating table, desk, two chairs and an electrical machine.

30 The complainant-appellee produced four witnesses who had visited the defendant-appellant at his office. They complained of various ailments. For some he prescribed a diet and gave them salts to take inwardly. To others he gave oxy christine, into which he had put some other ingredient. He always gave the medicine before giving them his treatment. He also gave them electrical treatments, using an electric vibrator attached to an electrical machine. He sometimes used an electric lamp which he held close to various parts of the body until they became very warm. The witnesses paid him for these treatments.

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Under the statute the defendant-appellant was limited in giving his treatment to the use of his hands. Here he prescribed medicine, diagnosed and gave electrical treatments for various ailments. He exceeded his authority under the statute.

The defendant-appellant, in admitting these acts, claimed that these acts were mere adjuncts to the practice of chiropractic under the statute. 10 If that position is sound where is the line to be drawn? Who is to say what is or is not an adjunct to the practice of chiropractic? But this contention is unsound because the statute itself draws the line and confines it to treatments by use of the hand or hands only on the spinal column. There is no authority in the statute for the use of any adjunct to this practice. If salts, oxy christine and other remedies of that character may be used as an adjunct why stop there? Why 20 not extend it to other remedies that might act as a stimulant to the system before the treatment is applied? The Court would then have to determine in each case whether the substance prescribed or the electric machine used by the defendant was an adjunct to the practice of chiropractic. The legal and safe course to pursue is to confine the practice of chiropractic to the statute, which provides for treatment by the use 30 of the hands only, and leave it to the Legislature to say whether this shall be extended. The defendant-appellant, therefore, did commit acts which he had no legal authority to do.

The question of whether or not a licensed chiropractor has the right to commit the acts complained of here has been before the Supreme Court in other cases.

*Medical Board v. Baudendistel*, 140 Atl. 886. 40

*State Medical Board v. Livesey, decided February 8, 1928.* In this case, the Supreme Court (Case P. 42) in reversing the First District Court of the City of Jersey City, which found the defendant-appellant not guilty said:

10 "Whether or not the defendant prescribed or gave medicines was manifestly in dispute in the evidence, and the judgment, therefore, cannot be disturbed on that ground. But beyond dispute he did give electrical treatments for various ailments. So far as this court is concerned we are bound to hold that in so doing he exceeded his authority under the statute. See *State Board of Medical Examiners v. Lezenby*, 1 N. J. Misc. Rep. 20, in which it was held that the giving of electrical treatments was a violation of the State Medical Act, and a judgment in favor of the accused was reversed."

20 The defendant-appellant, therefore, clearly exceeded the limitation of the statute defining the practice of chiropractic. He did much more than use his hands and, therefore, committed acts which he was not licensed to do. He, therefore, did practice medicine and surgery as charged within the meaning of Chapter 271, P. L. 1915.

It is respectfully submitted that the judgment of the Supreme Court should be affirmed.

30 EDWARD L. KATZENBACH,  
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*Attorney of Complainant-Appellee.*