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A

Notice of Appeal.

NOTICE OF APPEAL.

New Jersey Supreme Court

| | | | |
|--|---|--|----|
| STATE BOARD OF MEDICAL EX-AMINERS OF NEW JERSEY, <i>Plaintiff-Appellee,</i> <i>Defendant-in-Certiorari,</i> vs. CHARLES D. BAUDENDISTEL, <i>Defendant-Appellant,</i> <i>Plaintiff-in-Certiorari.</i> | } | <i>In Certiorari.</i> <i>Notice of Appeal to the Court of Errors and Appeals.</i> | 10 |
|--|---|--|----|

To Edward L. Katzenbach, Attorney of Plaintiff-Appellee, Defendant-in-Certiorari, or to whom it may concern: 20

SIR:
 TAKE NOTICE that the defendant-appellant hereby appeals to the New Jersey Court of Errors and Appeals from the judgment of the New Jersey Supreme Court affirming the judgment of the First District Court of the City of Jersey City.

NATHAN H. BERGER, 30
 Attorney of Defendant-Appellant,
 Plaintiff-in-Certiorari.

I hereby conceive there is a good cause for appeal in the above-stated case.

NATHAN H. BERGER,
 Attorney of Defendant-Appellant,
 Plaintiff-in-Certiorari.

40

Grounds of Appeal.

GROUNDS OF APPEAL.

New Jersey Court of Errors and Appeals

10

STATE BOARD OF MEDICAL EX-
 AMINERS OF NEW JERSEY,
Plaintiff-Appellee,
Defendant-in-Certiorari,
 vs.
 CHARLES D. BAUDENDISTEL,
Defendant-Appellant,
Plaintiff-in-Certiorari.

*On Appeal to
 the New Jer-
 sey Court of
 Errors and
 Appeals.*
Reasons.

20

1. The Trial Court erroneously found the defendant guilty, and the New Jersey Supreme Court erred in sustaining that finding.

2. The Trial Court erroneously gave judgment for the plaintiff and against the defendant, and the New Jersey Supreme Court erred in affirming said judgment.

30

3. The Trial Court under the evidence should have found the defendant not guilty as charged, but failed to do so, and the New Jersey Supreme Court erred in sustaining the Trial Court.

4. The Trial Court erred in determining this cause without having jurisdiction, and the New Jersey Supreme Court erred in sustaining the determination of this cause by the Trial Court.

40

5. The Trial Court erred in finding the defendant a Licensed Osteopath, guilty of practicing medicine without a license, and the New Jersey Supreme Court erred in sustaining this finding.

Grounds of Appeal.

6. The Trial Court erred in finding the defendant a Licensed Chiropractic guilty of practicing medicine without a license, and the New Jersey Supreme Court erred in sustaining this finding.

10

7. The amount of the penalty awarded to the plaintiff against the defendant is excessive, and unwarranted under the complaint filed by the plaintiff herein and the New Jersey Supreme Court erred in sustaining this award by the Trial Court.

Respectfully,

NATHAN H. BERGER,
 Attorney for Defendant-Appellant,
 Plaintiff-in-Certiorari.

20

30

40

Writ of Certiorari.

WRIT OF CERTIORARI.

NEW JERSEY SUPREME COURT.

| | | | |
|--|---|-----------------------|----|
| STATE BOARD OF MEDICAL EX- AMINERS OF NEW JERSEY, <i>Plaintiff,</i> <i>Defendant-in-Certiorari,</i> | } | <i>In Certiorari.</i> | 10 |
| <i>vs.</i> CHARLES D. BAUDENDISTEL, <i>Defendant,</i> <i>Plaintiff-in-Certiorari.</i> | | | |

WRIT.

NEW JERSEY, *ss.* 20

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

We being willing, for certain reasons,
to be certified of the determination or judgment
given or made before you in a certain proceed-
ing brought against Charles D. Baudendistel at
the suit of the State Board of Medical Examiners
of New Jersey, do hereby command you that you 30
send under your seal to our Justices of the
Supreme Court of Judicature of the State of New
Jersey, on the 10th day of March 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 further cause to be done what of right
we shall see fit to be done. 40

Writ of Certiorari.

WITNESS James Minturn, Justice of our Supreme Court at Trenton, this 24th day of February, 1927.

EDWARD J. KELLEHER,
Clerk.

10 NATHAN H. BERGER,
Attorney for Charles D. Baudendistel.

I allow the within writ.

Let it be sealed.

February 24, 1927.

JAMES MINTURN,
J. S. C.

20 Service of a true copy of the within writ in certiorari, is hereby acknowledged this 1st day of March, 1927.

30

40

Return.

RETURN.

NEW JERSEY SUPREME COURT.

STATE BOARD OF MEDICAL EX-
AMINERS OF NEW JERSEY,
Plaintiff,
Defendant-in-Certiorari,

10

vs.

CHARLES D. BAUDENDISTEL,
Defendant,
Plaintiff-in-Certiorari.

In obedience to the command of the foregoing writ to be directed, I, Charles L. Carrick, Judge of the First District Court of the City of Jersey City, do hereby certify and send to the Honorable, the Justice of the Supreme Court within mentioned, the proceedings, testimony, exhibits, determination or judgment aforesaid, whereof mention is within made, with all things touching the same, as fully as before me they remain.

20

IN WITNESS WHEREOF I have hereunto set my hand, and caused the seal of the Court to be hereto affixed, this ninth day of March, A. D. 1927.

30

CHARLES L. CARRICK,
Judge.

(SEAL)

Attest:

B. FRANCES MARRON,
Clerk.

40

Complaint.

COMPLAINT.

10 STATE BOARD OF MEDICAL EX-
 AMINERS OF NEW JERSEY,
Plaintiff,

vs.

CHARLES D. BAUDENDISTEL,
Defendant.

Complaint.

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

20 JAMES J. MCGUIRE, 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 be-
 lieves that during the months of February,
 March, April, May, June, July, August, Sep-
 tember, October, November and December, nine-
 teen hundred and twenty-five, and during the
 months of January, February, March, April,
 May, June, July, August, September, October,
 November and December, nineteen hundred and
 30 twenty-six, and during the month of January,
 nineteen hundred and twenty-seven, at West New
 York, in the County of Hudson and State of New
 Jersey, one Charles Baudendistel of West
 New York, 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-
 40 second, one thousand eight hundred and ninety-

Complaint.

four, as said section ten was amended by act ap-
 proved April eighth, one thousand nine hundred
 and twenty-one, in the following respect to wit:
 that the said Charles D. Baudendistel at the
 time and place aforesaid, did commence and
 continue the practice of medicine and surgery,
 within the meaning of section eight of said act, 10
 as said section eight was amended by act ap-
 proved April twelfth, nineteen hundred and fif-
 teen, 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,
 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 fifteenth 20
 day of June A. D. nineteen hundrd and twenty-
 three, said Charles D. Baudendistel, was con-
 victed in the First District Court of the City of
 Jersey City for a violation of the provisions of
 said section ten of the above recited act, and
 that the violation first above mentioned is
 another and a continuation of the violation for
 which said Charles D. Baudendistel was pre-
 viously convicted.

Deponent therefore says that the said Charles 30
 D. Baudendistel has incurred the penalty of two
 hundred dollars prescribed by section ten of
 the act above mentioned, as such section was
 amended, as aforesaid, for the aforesaid viola-
 tion, and prays that the said Charles D. Bauden-
 distel may be apprehended and dealt with ac-
 cording to law.

(Sgd.) JAMES J. MCGUIRE.

Warrant.

Sworn and subscribed before me
this second day of February
A. D. nineteen hundred and
twenty-seven.

WARRANT.

10

COUNTY, s. s.

The State of New Jersey to any
(SEAL) Constable of the County of Hudson,
or to the Sergeant-at-Arms of the
First District Court of the City of Jersey City
or to the Inspector of the State Board of Medi-
cal Examiners of New Jersey.

20

WHEREAS, Proof has been made before me
under oath that during the months of February,
March, April, May, June, July, August, Sep-
tember, October, November and December, nine-
teen hundred and twenty-five, and during the
months of January, February, March, April,
May, June, July, August, September, October,
November and December, nineteen hundred and
twenty-six, and during the month of January,
nineteen hundred and twenty-seven, at West New
York, in the County of Hudson, and State of
New Jersey, one Charles D. Baudendistel, of
West New York, in the County of Hudson and
State of New Jersey, did violate the tenth sec-
tion 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

30

40

Warrant.

hundred and twenty-one, in that the said Charles
D. Baudendistel at the time and place aforesaid,
did commence and continue the practice of
medicine and surgery within the meaning of
section eight of said act, as said section was
amended by act approved April twelfth, nineteen
hundred and fifteen, 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, contrary to and in violation of said
section ten of said act and against the form of
said Statute.

10

You are hereby commanded to take the body
of the said Charles D. Baudendistel 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 two
hundred dollars for the aforesaid violation,
and that the said defendant may be dealt with
according to law.

20

Witness, Charles L. Carrick, Esquire, Judge
of the First District Court of the City of Jersey
City, this 4th day of February A. D. nineteen
hundred and twenty-seven.

30

(Sgd.) B. FRANCES MARRON,
Clerk.

40

Bond.

BOND.

NEW JERSEY SUPREME COURT.

| | | | | | |
|----|--|---|-------------------|---------------------------------|-----------------------|
| 10 | STATE BOARD OF MEDICAL EX-AMINERS OF NEW JERSEY, | } | <i>Plaintiff,</i> | <i>Defendant-in-Certiorari,</i> | <i>In Certiorari.</i> |
| | | | | | |
| | <i>vs.</i> | | | | <i>Bond.</i> |
| | CHARLES D. BAUDENDISTEL, | } | <i>Defendant,</i> | <i>Plaintiff-in-Certiorari.</i> | |
| | | | | | |

20 KNOW ALL MEN BY THESE PRESENTS, That we, Charles D. Baudendistel and Joseph Stilz, are held and firmly bound unto State Board of Medical Examiners of New Jersey, in the sum of Three Hundred Fifty (\$350) Dollars, for the payment of which sum we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 23rd day of February, nineteen hundred and twenty-seven.

30 The condition of this obligation is such, that whereas a judgment has been rendered in the First District Court of the City of Jersey City, in favor of the State Board of Medical Examiners of New Jersey against Charles D. Baudendistel, for the sum of five hundred dollars and the said Charles D. Baudendistel has applied to James F. Minturn, a Justice of the Supreme Court, for a writ of certiorari to review said judgment because said Court was without jurisdiction in the premises;

40 Now, THEREFORE, if the said Charles D. Baudendistel shall prosecute said certiorari in the

Bond.

Supreme Court, and shall pay the sum recovered in the First District Court of the City of Jersey City, with interest and costs, if the judgment shall be affirmed, and shall in all things stand to abide the judgment of the Supreme Court by the Court below, then this obligation to be void, otherwise to remain in full force and virtue. 10

Signed sealed and delivered in the presence of

CHARLES D. BAUDENDISTEL (L. s.)
JOSEPH STILZ (L. s.)

STATE OF NEW JERSEY, }
COUNTY OF } ss. 20

JOSEPH STILZ, being duly sworn, on his oath says, that he is the surety in the within bond named; that he is worth the sum of five hundred and fifty dollars over and above all his just debts and liabilities and has property in the extent of twenty-five thousand dollars within the limits of the County of Hudson subject to execution.

JOSEPH STILZ (L. s.) 30

Sworn and subscribed to before me this 23rd day of February, 1927.

HARRY A. SCHER,
Master in Chancery of New Jersey.

I approve the within bond as to form and sufficiency. Let it be filed.

JAMES MINTURN,
J. S. C. 40

Erma Spruce, direct.

TRANSCRIPT OF CLERK'S DOCKET.

FIRST DISTRICT COURT OF
JERSEY CITY.

10

STATE MEDICAL BOARD,

Plaintiff,

vs.

CHARLES BAUDINTEL,

Defendant.

Transcript of stenographic notes of the testimony taken in the above-entitled matter before Hon. Charles Carrick, District Court Judge, at the District Court Chambers, 1 Exchange Place, Jersey City, New Jersey, on the 16th day of February A. D. 1927, at 11:15 A. M., in the forenoon.

20

Appearances:

Grover C. Richman, Esq., for the State.

Nathan Berger, Esq., for the defendant.

(At this point William C. O'Brien was sworn in to act as stenographer.)

30

ERMA SPRUCE, a witness on behalf of the State, sworn.

Direct examination by Mr. Richman.

Q Miss Spruce, did you visit the defendant in this case? A I did.

Q When? A I visited him January 14th and January 22, 1927.

40

Q Where did you go? A I went to 530 Eighteenth street, West New York, New Jersey.

Erma Spruce, direct.

Q Will you describe the place you went?

A It was a private residence and in the right-hand side going in, in the window was a white sign with black letters "Dr. (abbreviated) Chas. (abbreviated) Baudinstel." As you entered there was a reception room to the right and the next room adjoining that was the treating room.

10

Q What did you notice in there? A In the treating room was a table, a leather table with what was a desk, with different bottles and boxes and things on it, that he used for, I guess, a combination of desk and book case, it looked like to me.

Q Did you have a conversation with him on your first visit? A Yes.

Q What was said? A I asked if he was Dr. Baudinstel and he said he was. He asked me what I wanted and I told him I felt very nervous and sick, sick all the time and I was upset and I didn't feel at all well. He said, "You have melancholia due to your nervousness." He told me that if I would tell him my trouble, he said, "It seems there is something on your mind. Tell me your troubles and I will fix you up." He took hold of my hand and held it, pressed on it, felt my hand and looked in my eyes and then he said, "You have stomach trouble, liver trouble, and rheumatism." He said, "Your stomach is upset from your nerves and the melancholia from your nerves and I will fix your nerves up and then your stomach and liver and rheumatism will go away."

20

30

Q Did he give you anything, A On the first visit he gave me a bottle of—he called it liniment, and told me to use it externally and told me—

40

Erma Spruce, direct.

Q The bottle with the white substance he told you to use externally? A Yes. How often to rub it on whenever I have pain.

Mr. Richman: I offer the bottle in evidence.

10 (Bottle referred to above entered in evidence and marked Exhibit P. 1.)

Q What else did he give you? A Well, he gave me a bottle of this and said it is for my liver and stomach, take a tablespoon full four times in a day.

Mr. Richman: I offer this in evidence.
(Bottles above referred to marked Exhibit P. 2.)

20

Q What else did he give you? A Then he gave me this box of herbs and said, "These are for rheumatism, steep a tablespoon full in a cup of boiling water and take it three times a day, especially before you go to bed at night."

Mr. Richman: I offer the bottle in evidence.

30

(Bottle above referred to marked Exhibit P. 3.)

Q Did you pay him? A I did.

Q How much? A I paid him \$2.25.

Q After that what happened on that visit?

A I was with Mrs. Smith.

Q Then you left, didn't you? A Yes, after I paid him.

Q Did you return? A Oh, he told me not to eat pork, to eat no pork, no veal, to eat mutton

40

Erma Spruce, direct.

and chicken and watch my diet, not to eat anything greasy or fried, and he said I should eat lots of fruit and vegetables, greens.

Q Now, since then, did you return again on January 22nd? A Yes.

Q Did you see the defendant at that time? A I did.

10

Q Do you recognize him now? A Next to Mr. Berger.

Q What was said between you on that visit? A Dr. Baudinstel asked me how I felt, I said, "Not so good." He said, "If you've been doing what I said you should feel better." I said, "Well, I had an awful pain." He said, "Are you menstruating." I said, "I was." Then he said, "I will give you different treatments for it. Then he told me to lay on the table and he got an electric lamp and put it all over my abdomen and he kept it on about fifteen minutes and he pressed with his fingers on different parts of my body and I told him I felt sore and he said, "That shows you need this, but the next time you come I will give you a different treatment and that soreness will all go."

20

Q Did he give you anything else? A He said all he thought I needed on this visit was this. (Indicating bottle.)

30

Q What were you to do with this? A I was to take a tablespoon full four times a day.

Q What was this for, did he say? A My liver and my stomach.

Mr. Richman: I offer that in evidence.

(Bottle above referred to marked in evidence, Exhibit P. 4.)

Q Did you pay him on that visit? A I paid him a dollar.

40

Erma Spruce, cross.

Q In cash? A Yes.

Mr. Richman: That's all.

Cross examination by Mr. Berger.

10 Q Who was with you on this occasion, Mrs. Spruce? A On the first occasion?

Q Yes. A Mrs. Smith.

Q Miss Smith? A Mrs. Smith.

Q You were there twice? A Yes.

Q Who was with you on the second occasion?
A Mrs. Smith.

Q How did you come to go to his office?

A The first time?

Q Yes. A I was sent there.

20 Q Sent there by whom? A The Medical Board.

Q To get evidence? A No.

Q For what purpose? A To see what Dr. Baudinstel was doing.

Q You went in and told him that you were ill, didn't you? A I did.

Q When, in fact, you weren't ill? A I certainly was not.

Q You weren't ill? A I was not.

30 Q Did you go there to get treatments? A I went there to tell him about my illness.

Q Did you take any of this stuff he gave you? A I didn't.

Q Is it in the same condition as you got it?
A It is, only it was wrapped in paper.

Q What did you do with it after you got it?
A I took it home.

Q Keep it there? A Yes, sir.

Q Until today? A Until today.

40 Q Until today? A Until yesterday, I was in Newark last night.

Erma Spruce, cross.

Q Where did you keep it in your home?
A In my home.

Q How long was it there? A From January 14th.

Q Who lived in your house besides you?
A My mother and father.

Q You don't know what was done with these bottles since you brought them there? A I certainly do. 10

Q Well, you are away part of the time, aren't you? A Yes.

Q During the time you were away from the house you don't know what was put in the bottles, do you? A I do.

Q How do you know, being away? A I know I had it where no one could get access to it. 20

Q Where was that? A In my bedroom closet under lock and key and I had the key. 20

Q You had it under lock and key? A I had it under lock and key.

Q Because of what? A Because it is valuable.

Q Kept it locked from your father and mother, did you? A Not necessarily.

Q From whom did you lock it, for particularly? A There are people coming to my bedroom, I have social callers. 30

Q They come when you are there, don't they? A They come when I am not there, too.

Q They come when you are not there? A Yes.

Q Did you lock it from them? A Not especially.

Q When did you take it out of this closet?
A Valentine's day.

Q Didn't you take these bottles down to the Medical Board at Trenton? A I didn't. 40

Alithea Smith, direct.

Q At no time? A No, I took them to the Medical Board yesterday to meet Mrs. Wilkinson.

Q You didn't deliver them to anybody? A No, I kept them in my own possession.

Q All the time? A All the time.

10

Mr. Berger: That's all.

ALITHEA SMITH, a witness on behalf of the State, sworn.

Direct examination by Mr. Richman.

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

Q When? A January 14th, January 18th, January 22nd, January 28, 1927.

Q Where did you go? A 538 Eighteenth street, West New York, New Jersey.

Q Now, on your visit of January 14th, did you see the defendant? A I did.

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

Q What was said between you? A He asked me what was the matter with me and I told him I had a sick stomach and pimples that I wanted to get rid of. He gave me this box of herbs and told me to take a tablespoon full in a cup of boiling water three times a day, especially at night and he gave me a bottle of this liniment to rub on, to rub on the sore places and he told me that I had uric acid, rheumatism and bad blood.

Mr. Richman: I offer the box and the bottle in evidence.

40

Alithea Smith, direct.

(Box and bottle above referred to entered in evidence and marked Exhibits P. 5 and P. 6 respectively.)

Q Did you pay him on that visit? A I did.

Q Did he give you anything else? A No.

Q What kind of a place was it? A It was a private home, there was a sign in the window, a white sign with black letters, "Dr. Charles Baudinstel," doctor was abbreviated and Charles abbreviated. The room we went into on the right as you go in the front door was the office, and a flat top desk in the center and there was a room in back of that had another desk, a treating table and two or three chairs and an electric light.

10

Q Now, you returned on or about— A January 18th.

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

Q What was said between you? A Well, I told him I had a pain in the chest and felt kind of sick and he said that I had the grip and told me to take a tablespoon full of Vick's Vaporub and put it in a basin of boiling water and put a towel over my head and inhale it and take a good dose of his tea and I would be all right.

30

Q Did he give you anything on that visit? A No.

Q Did you pay him? A No.

Q When did you return? A January 22nd.

Q The same place? A Yes.

Q Saw the defendant? A Yes.

Q What was the conversation on that day? A I told him I had stiff muscles and felt sick so he said he would look at me and felt all over my arms, in fact, felt all over my body and put

40

Alithea Smith, direct.

the electric lamp all over my back and over my chest.

Q Where were you then? A Lying on the treating table and he rubbed two kinds of liniment, he said it was a liniment on my back and on my legs, and oil, and then he gave me this
10 bottle and told me to take a tablespoon full four times a day before and after meals.

Mr. Richman: I offer that in evidence.

(Bottle above referred to entered in evidence and marked Exhibit P. 7.)

Q Did he give you anything else on that visit?
A No.

Q Did you pay him? A 75 cents.

Q Then you returned again on what date?
20 A January 28th.

Q What happened on that visit? A On that visit I laid on the treating table as he told me to. He felt my body all over and told me that I was all puffed up, due to the liver condition and I needed lots of attention. That I was in a pretty bad condition and he gave me another box of herbs and another bottle of medicine and told me to take a salt bath, using a half a bag of ordinary table salt.

30 Q What were you to do if anything with the herbs? A Take a tablespoon full steeped in a cupful of boiling water three times a day, especially at night, with the liniment rubbed on night and morning.

Q Did you pay him on that visit? A \$1.50.

Q Did you return after that? A No.

Mr. Richman: I offer the box of herbs and the bottle with the contents in evidence.

40

Alithea Smith, cross.

(Box and bottle above referred to entered in evidence and marked Exhibits P. 8 and P. 9 respectively.)

Mr. Richman: That's all.

Cross examination by Mr. Berger.

10

Q What is the full name? A Alithea Smith.

Q How do you spell the first name? A A-l-i-t-h-e-a.

Q Where do you live, Mrs. Smith? A Where do I live?

Q Yes. A White-Horse, Trenton, N. J.

Q You were sent to Dr. Baudinstel by the Medical Board? A I was.

Q To get evidence? A To see what he was doing.

20

Q To get evidence? A To see what he was doing.

Q And to get evidence? A I don't know how they used it, whether they used it as evidence or not.

Q You got all of those bottles and boxes?
A I did.

Q When you got them, what did you do with them? A Took them home.

Q Then what did you do with them? A 30 Put them in a closet.

Q Lock them up? A I did.

Q So as to keep your social callers from looking at them?

Mr. Richman: I object as irrelevant and immaterial.

Q Why did you lock them up? A Because I knew I would have to bring them to court and would need them.

40

Faustina Hess, direct.

Q Kept them locked up from them till yesterday? A I did.

Q Took them out yesterday? A No, took them out this morning.

Q You brought them here this morning as you left them in the closet, is that right?

10 A Yes.

Q Never used any of it? A No.

Q Never opened these bottles at all? A No.

Q Didn't open the boxes either? A No.

Mr. Berger: That's all.

Mr. Richman: That's all.

20 FAUSTINA HESS, a witness on behalf of the State, sworn.

Direct examination by Mr. Richman.

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

Q When? A January 18th and January 28th.

Q Where did you go? A 530 Eighteenth street, West New York, New Jersey.

30 Q On your first visit did you see the defendant? A I did.

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

Q What was said? A Why, I just told him I didn't feel very well so he told me to sit down on a chair and he took my pulse and pressed on my hand and arm, and looked at my fingernails and then he said, that I had lots of gas and stomach disorder and rheumatism and liver trouble and he said that I was very nervous

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Faustina Hess, direct.

and inclined to be melancholic and worried considerably and I shouldn't worry about anything, there is nothing in life worth worrying about that I shouldn't worry and he never worried and he wouldn't worry about anything. Then he told me to take the herbs which he was going to give me and steep a tablespoon full in hot water and drink some of it at night and what was left to drink during the day and if that wasn't strong enough to make it stronger and if it was too strong to make it weaker, use my own judgment on that. He told me I should be careful in my diet, he said fruit and vegetables. Then he asked me if I had pain in the back or not and he gave me a liniment that I should use on it night and morning. Then he said the stomach and liver remedies, take a tablespoon full before meals and on retiring, four times a day.

Q What did he give you on your first visit, is this the box of herbs? A No, that is the second visit, that is the same thing.

Q This is the herb that he gave you on the first visit? A This is the herb that he gave me on the first visit.

Q How were you to take that, did he say? A A tablespoon full in hot water and let it steep, and drink perhaps a half a cup at night and the rest during the day.

Mr. Richman: I offer it in evidence.

(Box of herbs above referred to marked in evidence as Exhibit P. 10.)

Q What else did he give you? A This is liniment.

Q What was you to do with that, did he say? A Rub the back and arms morning and night.

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Faustina Hess, direct.

Mr. Richman: I offer it in evidence.

(Bottle referred to above marked in evidence Exhibit P. 11.)

Q What else did he give you? A Two bottles for the stomach and liver.

10 Q How were you to take them, did he say?
A That was a tablespoonfull before meals and on retiring.

Mr. Richman: I offer it in evidence.

(Bottles referred to above entered in evidence and marked Exhibits P. 12 and P. 13 respectively.)

A He gave me two bottles on his first visit that he said they would last about nine days and then come back.

20 Q Did you pay him on your first visit? A I paid him \$3.

Q You paid him \$3? A Yes.

Q Then you returned on the 28th of January? A Then I returned on the 28th of January.

30 Q What happened on that visit? A Well, he asked me how I was feeling and I said about the same and told him I had a stiff neck and my back was a little sore and he had some sort of liniment and rubbed my neck and chest a little bit and he said it was a rheumatic condition and a little cold and he told me to continue on the medicine and herbs and liniment and he thought I would be all right.

Q Did he give you any more? A Yes, he gave me more.

Q This was on the second visit you made?

A This was on the second visit I made he gave me one box of stomach remedies and herbs.

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Faustina Hess, cross.

Q On the second visit? A Yes.

Q Told you to take them the same way? A The same way.

Q You paid him? A I paid him \$2.50.

Mr. Richman: Cross examine.

10

Cross examination by Mr. Berger.

Q Where do you live, Mrs. Hess? A I live in Trenton.

Q What is the address in Trenton? A 55 Wilkinson Place.

Q You were sent to Dr. Baudinstel by the Medical Board? A Yes.

Q To find out what he was doing? A To find out what he was doing.

20

Q And you did? A Yes, as far as I know.

Q You got those bottles and boxes of him on those two visits? A Yes.

Q What did you do with them when you got them? A Took them home.

Q Locked them up in the closet? A No, I didn't lock them up, I had them in a box. I keep those things in.

Q You brought them here to court? A This morning.

30

Q They were in your house during all the time you had them? A Yes.

Q Until you brought them here? A Yes.

Q Nobody had access to it as far as you know? A Just myself and the others lived in the house.

Q You didn't use any of the stuff? A No.

Q Put it away and you kept it and brought it here as you received it? A Yes.

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Faustina Hess, cross.

Q As a matter of fact you weren't sick, were you? A As a matter of fact I did have pain in my back and arm.

Q Did you get any relief from the treatment? A Why, I didn't take the treatment.

10 Mr. Berger: That's all.

Mr. Richman: I offer in evidence a certificate made admissible under the Act of 1924, that the defendant is not licensed to practice medicine and surgery.

Mr. Berger: I would like to see that, your Honor, if I may. I represent the defendant in this case.

The Court: Look at it.

(Certificate above referred to entered in evidence and marked Exhibit P. 14.)

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Mr. Richman: If the Court please, I want to offer in evidence a conviction of this defendant in this Court in June 15, 1923, from the same offense as charged in this complaint.

Mr. Berger: I object to it on the ground there is no allegation in this complaint of this previous conviction.

30

The Court: What is the date, Mr. Richman?

Mr. Richman: June 15, 1923.

The Court: I will receive it.

Mr. Berger: I ask an exception.

The Court: Is that your case?

Mr. Richman: Our case.

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Charles P. Baudinstel, direct.

RESPONDENT'S CASE.

CHARLES P. BAUDINSTEEL, the defendant,
sworn.

Direct examination by Mr. Berger.

Q You are the defendant in this case? A I am the defendant in this case. 10

Q I show you a paper and ask you whether you are the same person as is named on this paper? A Yes, sir.

Mr. Berger: I offer this, your Honor.

The Court: What is it?

Mr. Berger: This is a license to practice osteopathy issued by the State Board on January 12th, 1917. 20

The Court: Osteopathy?

Mr. Berger: Yes, sir.

The Court: It will be received in evidence.

(Certificate above referred to marked Exhibit P 1.)

Q I show you another paper and ask you whether you are the same person as is named in that paper? A Yes, sir; the same person. 30

Mr. Berger: I offer this in evidence. This is an official license to practice chiropractics, issued by the State Board of Chiropractor Examiners on November 2nd, 1920.

The Court: It will be received in evidence.

(Certificate above referred to entered in evidence and marked Exhibit P. 2.)

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Motion for a Judgment for Defendant.

Mr. Berger: That's all, we rest. I move for a judgment for the defendant on the ground that the State has not substantiated its case under the complaint in this case. The complaint charges that the defendant violated the provision of Section 10 of an act of the Legislature, 10 entitled an act to practice medicine and surgery, in that he continued practicing medicine and surgery within the meaning of Section 8 of the State Act. Now, in the first place Section 8 provides that any person shall be regarded as practicing medicine who does certain things and then Section 9, following Section 8, specifically exempts the practice of osteopathy from the provisions of Section 8 and therefore this section or at least this prosecution does not apply to this defendant 20 in this case who is proven to be a licensed osteopath under the act licensing or regulating osteopaths. There is also in evidence, your Honor, an official license which gives him the right to practice chiropracty and I submit that under that license the defendant in this case is exempted from the provisions of Section 10 in this act, under which the prosecution is brought.

(Further discussion between counsel.)

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The Court: I think it is very clear here this defendant is guilty of a violation of the Medical Act. There will be a judgment here for \$500. If there is to be any further construction of this act it should be done by the Supreme Court.

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Certificate of Judge and Stenographer.

I hereby certify that the foregoing is a true and accurate transcript of the above-entitled matter as taken stenographically by me at the time, place and date hereinbefore set forth.

WILLIAM C. O'BRIEN,
Court Stenographer.

10

I hereby certify that I believe the foregoing is a true and accurate transcript of the testimony taken in the above-entitled matter before me at the time, place and date hereinbefore set forth.

CHARLES L. CARRICK,
District Court Judge.

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TRANSCRIPT OF CLERK'S DOCKET.

FIRST DISTRICT COURT OF JERSEY CITY.

No. 161760.

10 STATE BOARD OF MEDICAL EX-
AMINERS OF NEW JERSEY,
Plaintiff, } In Debt \$500.
vs.
CHARLES D. BAUDENDISTEL,
Defendant.

20 STATE OF NEW JERSEY, }
HUDSON COUNTY, } ss.
CITY OF JERSEY CITY. }

Before Charles L. Carrick, Esquire, judge.
Edward L. Katzenbach, plaintiff's attorney.
Nathan H. Herger, defendant's attorney.

| | | | |
|----|---------------|--------|--------|
| | Costs. | City | Al |
| | Warrant | \$1.50 | |
| | Service | | 85 |
| | Meleage | | 64 |
| 30 | Trial | 1.50 | |
| | | ----- | ----- |
| | | \$3.00 | \$1.39 |

February 4 A. D. 1927, plaintiff filed a complaint allegeing that Charles D. Baudendistel, was during certain months guilty of violating 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, &c.

February 4 A. D. 1927, a warrant was issued to Henry A. Boesch, Sergeant-at-arms, against the body of the said defendant, returnable forthwith.

February 4 A. D. 1927, said constable returned said warrant as follows, viz, "I return within writ having brought defendant into court, and he having filed a bond for appearance on February 15 A. D. 1927, I released him."

(Sgd.) HENRY A. BOESCH,
Sergeant-at-Arms.

February 15 A. D. 1927, both parties appearing before the Court, the trial of the cause was proceeded with as follows: 20

Upon application of plaintiff, William C. O'Brien was appointed and sworn as stenographer.

On the part of the plaintiff, Erma Spruce, Alethia Smith and Frostina Hess were sworn and testified. A lot of bottles and packages and one certificate offered and received in evidence.

On the part of the defendant, Charles D. Baudendistel was sworn and testified. One certificate offered and received in evidence. 30

Whereupon it is on this fifteenth day of February A. D. 1927, by this Court considered and adjudged that said Charles D. Baudendistel is guilty of violating 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 to punish persons violating the provisions thereof" and that the State Board of Medical Examiners, plaintiff, 40

Transcript of Clerk's Docket.

recover from said Charles D. Baudendistel, defendant, the sum of five hundred dollars, penalty, and four dollars and forty-nine cents, costs of suit, and unless the said penalty and costs be paid, that defendant be committed to the common jail of the county.

10 Upon application of defendant the Court gave until February 21, 1927, for settlement or appeal.

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*Reasons.***REASONS.**

NEW JERSEY SUPREME COURT.

STATE BOARD OF MEDICAL EX-
AMINERS OF NEW JERSEY,

Plaintiff,
Defendant-in-Certiorari,

vs.

CHARLES D. BAUDENDISTEL,
Defendant,
Plaintiff-in-Certiorari.

10

In
Certiorari.

Reasons.

Now comes Charles D. Baudendistel, the above-named defendant, and assigns and files the following reasons upon which it will rely for the reversal of the judgment in the above-entitled cause:

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1. The Court erroneously found the defendant guilty

2. The Court erroneously gave judgment for the plaintiff and against the defendant.

3. The Court, under the evidence should have found the defendant not guilty as charged.

4. The judgment of the Court is erroneous, illegal and contrary to law. 30

5. The Court was without jurisdiction to hear and determine said cause.

6. The amount of the penalty awarded to the plaintiff against the defendant is excessive and unwarranted under the complaint filed by the plaintiff herein.

Respectfully,

NATHAN H. BERGER,
Attorney for Charles D. Baudendistel.

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Opinion of Supreme Court.

OPINION OF SUPREME COURT.

NEW JERSEY SUPREME COURT.

| | | | |
|----|---|---|-----------------------|
| 10 | STATE BOARD OF MEDICAL EX- AMINERS OF NEW JERSEY, <i>Plaintiff-Respondent,</i> <i>Defendant-in-Certiorari,</i> | } | <i>In Certiorari.</i> |
| | <i>vs.</i> | | <i>Judgment.</i> |
| | CHARLES D. BAUDENDISTEL, <i>Defendant-Appellant,</i> <i>Plaintiff-in-Certiorari.</i> | | |

Per Curiam:

20 The prosecutor was convicted in the First Dis-
trict Court of Jersey City on a complaint charg-
ing him with a violation of section 10 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 pro-
visions thereof," approved May 22, 1894 (3
Comp. St. 1910 p. 3333, Sec. 37) and said section
10 was amended by an act approved April 8, 1921
30 (P. L. p. 708, Sec. 4), in that the prosecutor,
during the months of February, March, etc. 1925,
and during the months of January, February etc.
1926, and during the month of January, 1927,
at West New York, etc. did commence and con-
tinue the practice of medicine and surgery with-
in the meaning of section 8 of said act (3 Comp.
St. 1910, p. 3332, sec. 35) and said section 8 was
amended by an act approved April 12, 1915 (P.
L. p. 482, sec. 5) without first having obtained
and filed a license for such practice, issued by the
40 State Board of Medical Examiners of New Jer-
sey as provided for under the provisions of said

Opinion of Supreme Court.

act, and that on the 15th day of June, 1923, the
prosecutor was convicted in said court for a vio-
lation of the provision of said section 10 of the
act, and that the violation mentioned is another
and a continuation of the violation for which the
prosecutor was previously convicted.

There was testimony that the prosecutor was 10
an osteopath and chiropractic. In the window
of his office there was displayed a white sign
with black letters "Dr. Chas. Baudendistel."
There was testimony that the prosecutor on
divers dates mentioned in the complaint treated
persons who came to him for medical treatment
by giving them medicines to effect a cure for the
bodily ailments of which they complained. There
was also proof that the prosecutor had been con-
victed in the First District Court of Jersey City 20
for a previous violation of the provisions of the
section of the above cited act.

The prosecutor made no attempt to refute the
charges against him and only offered in his de-
fense a license to practice osteopathy issued by
the state board to him, on January 12, 1917, and
also an official license issued to him to practice
chiropractics, by the State Board of Chiroprac-
tor Examiners, on November 22, 1920. The de-
fense then rested its case and contended, and 30
now contends here that under the license granted
to the prosecutor to practice osteopathy, the acts
complained of and testified to by the witnesses
did not come within the inhibition of section 10
of the statute alleged to have been violated, since
osteopaths were expressly excluded from the ap-
plication of the prohibitory provisions regulat-
ing the practice of medicine and surgery, by
virtue of section 9 (3 Comp. St. 1910, p. 3332,
sec. 36) of the act.

Opinion of Supreme Court.

We think the practice of osteopathy is confined to the manipulation of the human body by applying the hands only to the body of the patient. See *State v. Herring*, 70 N. J. Law, 34 56A, 670, 1 Ann. Cas. 51.

Judgment is affirmed with costs.

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*Exhibit P. 1.***EXHIBIT P. 1.**

Certified Copy

THE STATE BOARD OF MEDICAL EXAMINERS
of New Jersey

[STATE SEAL]

10

THIS CERTIFICATE of License to practice Osteopathy in the State of New Jersey, is hereby issued to Charles D. Baudendistel under a "Supplement to an act entitled 'An act to regulate the practice of Osteopathy in the State of New Jersey, and to license osteopathic physicians in this State and punish persons violating the provisions thereof,' approved April 2nd, 1913," approved April 14th, 1915, upon his presentation of evidence of being a legal resident of this State, actually engaged in the practice of Osteopathy, and having graduated from a regularly incorporated School or College of Osteopathy, requiring personal attendance.

20

Dated at Trenton, N. J., January 12th, 1917
Number 296

Wm. Perry Watson, A. M., M. D., President.
Alexander Macalister, M. D., Phg., Secretary.

(SEAL)

30

Trenton, New Jersey February 19th, 1924

I, Alexander Macalister, M. D., Secretary of the State Board of Medical Examiners of New Jersey, do hereby certify that the foregoing is a true copy of the Certificate of License issued by this Board to Charles D. Baudendistel, D. O., on January 12th, 1917.

Alexander Macalister, M. D.,

Secretary.

40

Exhibit P. 2.

EXHIBIT P. 2.

STATE BOARD OF CHIROPRACTIC EXAMINERS

[STATE SEAL]

State of New Jersey

10 Certificate and License to Practice Chiropractic

By virtue of an Act of the Legislature of the State of New Jersey, Statutes of 1920, creating a State Board of Chiropractic Examiners,

DOCTOR CHARLES D. BAUDENDISTEL

having conformed to the terms of the law, is hereby granted this certificate, which licenses him to practice the science of Chiropractic in this State. Chiropractic is hereby defined as a system of adjusting the spine by hand for the

20

elimination of the cause of disease.

This Certificate must be prominently displayed, and is revocable for cause.

Given under our hands and the seal of the State Board of Chiropractic Examiners at Trenton, New Jersey, this 2nd day of Nov. in the year 1920.

Andrew M. Englert, D. C.
President

30

James G. Reynolds, D. C.
Secretary

Harry C. DeBaun, D. C.
Treasurer

William A. Dittmar, D. C.
William H. Martin, D. C.

(SEAL OF THE BOARD)

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Exhibit P. 2.

Number 224

Received in the office of the Secretary of State at Trenton this 7th day of Dec. A. D. 1920, and recorded on page 224.

Thomas F. Martin,
Secretary of State. 10

STATE OF NEW JERSEY

Department of State

I, THOMAS F. MARTIN, Secretary of State of the State of New Jersey, DO HEREBY CERTIFY that the foregoing is a true copy of Chiropractic License of Doctor Charles D. Baudendistel, a Licensed Chiropractor of the State of New Jersey, dated Nov. 2nd, 1920 as the same, is taken from and compared with the original Recorded in Book 1 on page 224 of Licenses of New Jersey State Board of Chiropractic Examiners on Dec. 7th, 1920 and now remaining on file and of record in my office

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IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal (SEAL) at Trenton, this fifteenth day of February A. D. 1924.

Thomas F. Martin
Secretary of State 30

CERTIFIED COPY

of

Chiropractic License of
Doctor Charles D. Baudendistel
a Licensed Chiropractor of the State
of New Jersey on Nov. 2nd, 1920.

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New Jersey Court of Errors and Appeals

| | | |
|---|---|--|
| STATE BOARD OF MEDICAL EXAM- INERS OF NEW JERSEY, <i>Plaintiff-Respondent,</i> <i>Defendant-in-Certiorari,</i> | } | <i>In</i> <i>Certiorari.</i> |
| <i>vs.</i> | | <i>On Appeal</i> <i>from New</i> <i>Jersey</i> |
| CHARLES D. BAUDENDISTEL, <i>Defendant-Appellant,</i> <i>Plaintiff-in-Certiorari.</i> | } | <i>Supreme</i> <i>Court.</i> |

BRIEF FOR APPELLANT.

Facts.

The defendant-appellant (plaintiff-in-certiorari) hereinafter referred to as the defendant, was tried by the First District Court of Jersey City under a complaint charging him with the violation of Section 10 of "An Act to Regulate the Practice of Medicine and Surgery, etc.," approved May 22, 1894, as amended by an Act approved April 8, 1921, in that he practiced medicine and surgery without a license; that on June 15, 1923, the defendant was convicted of a similar violation; that the defendant has incurred a penalty of two hundred dollars, and prays that the defendant be dealt with according to law.

Plaintiff's case consisted of the testimony of three witnesses, Spruce, Smith and Hess, who testified that they called at the office of the defendant at different times and complained of different ailments; that the defendant gave them an assortment of bottles and boxes. The witness, Spruce, testified that she stated they contained liniment to be used externally. She also testified as follows:

“Q What else did he give you? A He gave me a bottle of this and said it was for my liver and stomach, take a tablespoonful four times a day.

Q What else did he give you? A He gave me this box of herbs and said ‘These are for rheumatism, seep a tablespoon in a cup of boiling water, and take it three times a day, especially before you go to bed’” (State of Case, p. 12).

The witness, Smith, testified that the defendant gave her a box of herbs and told her to take it at certain intervals, and gave her a bottle of liniment to rub on, and told her she had uric acid and bad blood (State of Case, p. 16, folios 30-40).

She testified further that on another occasion she complained of a pain in her chest and the defendant advised her to use Vick’s Vaporrub (State of Case, p. 17, folios 27-36). On another occasion the defendant put an electric lamp over her back and her chest, rubbed liniment on her and gave her this bottle and told her to take a tablespoonful at certain intervals (State of Case, p. 17, folios 37-40; p. 18, folios 1 to 10) that the defendant gave her a box of herbs and a bottle which she designated as “Medicine,” and advised her to take a salt bath, and advised her to take herbs in a certain manner, and to use liniment (State of Case, p. 18, folios 22-35).

The witness, Hess, testified that the defendant gave her a box of herbs, liniment and two bottles for the stomach and liver (State of Case, p. 21, folios 22-39; p. 22, folios 7-12).

Not one of these witnesses had ever opened the boxes or bottles, according to the testimony, and knew nothing about the contents of said boxes and bottles. There was not a scintilla of evidence

offered to prove what was contained in said boxes and bottles. There is no evidence in this case that these bottles and boxes contained drugs.

Plaintiff put in evidence a certificate to the effect that the defendant was not licensed to practice medicine and surgery.

The defendant testified that he was licensed on January 12, 1917, to practice osteopathy in New Jersey and put his license in evidence (Exhibit P. 1). He also put in evidence a certificate showing that he was licensed to practice chiropractic in New Jersey, on November 2, 1920 (this was marked Exhibit P. 2).

At the conclusion of the trial, the Court found the defendant guilty of the violation of the Medical Act, and imposed a penalty of \$500. The trial court stated “If there is to be any further construction of this act it should be done by the Supreme Court” (State of Case, p. 26, folios 30-35).

The defendant-appellant brought this case in the New Jersey Supreme Court on a Writ of Certiorari, and the Supreme Court affirmed the judgment of the First District Court of Jersey City.

POINT 1.

The Trial Court erred in finding defendant, a licensed osteopath, guilty of practicing medicine without a license. The New Jersey Supreme Court erred in affirming the finding of the Trial Court.

The defendant holds a license to practice osteopathy, issued to him pursuant to the provisions of Chapter 217 of the Laws of 1913. Section 4 of said act provides that such a license authorizes the holder thereof to practice osteopathy as therein defined in all its branches as taught and practiced in the lawfully incorporated schools or colleges of osteopathy. It does not license the holder thereof to prescribe or administer drugs or to perform such surgical operations as require cutting.

The defendant was tried for the violation of Section 10 of the Act to Regulate the Practice of Medicine and Surgery, as amended by Chapter 221 of the Laws of 1921. Section 9 of said Chapter 221, provides that the prohibitory provisions of that act, as amended, do not apply to the practice of a licensed osteopath. The trial court utterly disregarded this exception in finding the defendant, a licensed osteopath, guilty of violating the provisions of that very act. If there is proof that the defendant violated the provisions of the 4th section of Chapter 217 of the Laws of 1913, by prescribing or administering drugs, then he could not be prosecuted under the Medical Act.

Osteopathy has been recognized by the Legislature of this State, as a distinct branch of the healing art or a distinct science for the treatment of disease. Osteopaths are authorized by Chapter 217 of the Laws of 1913, to practice

this science in all its branches as taught and practiced in the schools and colleges of osteopathy. Section 2 of said act provides that applicants for a license to practice this science must submit proof that the applicant graduated as a doctor of osteopathy from a legally incorporated school or college of osteopathy, wherein the curriculum of study shall include instruction in the following branches; to wit: anatomy, physiology, pathology, histology, hygiene, toxicology and dietetics, chemistry, obstetrics, gynecology, osteopathy and physical diagnosis, principles of surgery, medical jurisprudence, bacteriology, theory and practice of osteopathy, and in such other subjects as the board may elect.

This would reasonably indicate that the Legislature intended to give the osteopath a wide scope in the practice of his science. There is no evidence in this case that the defendant went beyond the scope of the science of osteopathy, as above defined in the treatment of the witnesses of the plaintiff.

There is no evidence to support the charge that the defendant prescribed or administered drugs. The evidence tends to show that the defendant gave the witnesses of the plaintiff certain liquids and substances, the nature of which was not established by any evidence, and the trial court could not suppose that they consisted of and contained certain drugs.

The point is made by our Supreme Court in its opinion, affirming the judgment of the trial court that the practice of osteopathy is confined to the manipulation of the human body by applying the hands only to the body of the patient, citing the case of *State v. Herring*, 70 N. J. Law 34, 56A, 670.

It is the contention of the defendant that it was not a violation of an Act to Regulate the Practice of Medicine, etc., to display in the window of the defendant a sign reading "Dr. Charles Baudendistel." There was no evidence that the defendant gave the plaintiff's witnesses any medicines, as the witnesses never opened the packages, which they say they received of the defendant, and did not know of their contents. If the defendant's conduct constitutes any legal breach, it is a violation of the act under which the defendant was licensed as an osteopath, or of the act under which he was licensed as a chiropractor.

It could not have been the legislative intent to justify the prosecution of a licensed osteopath for the violation of Section 10 of the Medical Act, because of the display of a sign with the words "Dr." on it, or because the licensed osteopath gave a patient boxes and bottles, contents unknown, particularly in view of the express exception of osteopaths from the regulations of the Medical Act. Such prosecution if justified would be merely the placing of a weapon in the hands of one branch of the healing profession with which to destroy another branch of the same profession, and would tend to nullify the legislative intent to license and legalize the practice of osteopathy in this State.

POINT 2.

The Trial Court erred in finding defendant, a licensed chiropractor, guilty of practicing medicine without a license. The New Jersey Supreme Court erred in affirming the finding of the Trial Court.

The defendant holds a license to practice chiropractic, issued to him pursuant to the provisions of Chapter 4 of the Laws of 1920. This act was superceded by Chapter 136 of the Laws of 1921. The science of chiropractic is recognized by the Legislature of this State as a distinct branch or a distinct science for the treatment of disease.

The Act of 1921, which is subsequent to the amendment of Section 10 of the Medical Act (Chapter 271 of the Laws of 1915), prescribes what shall be considered as holding out oneself as a practitioner; turning to said Act of 1921 for a definition of what a chiropractor is, it is found that he is required to be examined for his license in the following subjects; medical and surgical diagnosis, anatomy, physiology, chemistry, histology, pathology, bacteriology, hygiene and medical jurisprudence, and in addition thereto, he is required to pass a special examination in the particular system or method of treatment of disease, which he desires to practice.

Section 7 of Chapter 136 of the Laws of 1921, prescribe that such a license, as the defendant in this case held, shall state plainly upon its face the system or branch of medicine or surgery or method of treatment of disease for the practice of which it is issued. Then follow these words: "No such license shall authorize the holder thereof to practice any system or branch of medicine or surgery, or method of treatment

of disease other than that stated in the certificate thereof. No such license shall authorize the holder thereof to prescribe any drug, or to do or perform any surgical operation requiring cutting, or to prescribe or use any anaesthetic." There is, however, a qualifying phrase "other than that stated in the certificate thereof."

There is not the slightest bit of evidence in this case that the defendant violated this limitation or did anything contrary thereto. There is no evidence in this case to support the charge that the defendant prescribed or administered drugs. The evidence tends to show that the defendant gave to the witnesses of plaintiff, certain liquids and substances, but there is no evidence to establish the nature of these liquids and substances. The burden of proof was on the plaintiff to establish this proposition, by a preponderance of the evidence but it failed utterly in sustaining the burden of proof.

In the case of *Stephen Toczko, etc., v. Otto Schultz*, decided by Honorable Henry E. Ackerson, Jr., at the Hudson County Circuit Court, on November 23, 1926, which case is not officially reported, the plaintiff sued a chiropractor for malpractice, and in proof of this malpractice, offered the testimony of medical doctors. Upon the objection of the attorney for the defendant to this testimony, the Court ruled that by virtue of the provisions of Chapter 136 of the Laws of 1921, chiropractic is recognized as a distinct branch or a distinct science for the treatment of disease; that the defendant chiropractor, by virtue of his license issued to him under the same Legislative enactment under which the defendant in the instant case received his chiropractic license, could diagnose and treat a case of rheumatism; that a chiropractor is to be judged

with respect to his skill by the standards of his branch of the healing art or science; that the Legislature of this State has recognized chiropractic as a separate healing system, that it has created a separate school in the healing science which should be judged by the practice and system existing in that school.

Following the reasoning in that case it is urged that if any evidence can be found in the instant case that the defendant's boxes and bottles given to the plaintiff's witnesses contained any drugs, that it constituted a violation of either Section 4 of Chapter 217 of the Laws of 1913, which is known as the Osteopathic Act or the provisions of Section 7 of the Laws of 1921, which is known as the Limited License Act, but the defendant cannot be convicted on the evidence in this case of violation of Section 10 of an Act to Regulate the Practice of Medicine and Surgery, known as Chapter 221 of the Laws of 1921.

POINT 3.

The amount of the penalty awarded to the plaintiff against the defendant is excessive and unwarranted under the complaint filed by the plaintiff herein.

The complaint on which this action was based, charges that the defendant has incurred the penalty of \$200 (State of Case, p. 5, folios 30-32). This action, is *quasi-criminal* in its nature, and is based on a statute which creates and defines offences unknown to common law and should be strictly construed. Section 10 of Chapter 221 of the Laws of 1921, the statute in question, provides for the filing of a complaint in writing, which is intended to apprise the defendant as to the nature of the charge against him, and as to the penalty that he is called upon to pay.

The trial court could not properly enter said judgment against the defendant for \$500, or for any amount in excess of \$200.

It is respectfully urged that the judgment appealed from should be reversed.

NATHAN H. BERGER,
Attorney for Defendant-Appellant,
Plaintiff-in-Certiorari.

NEW JERSEY
Court of Errors and Appeals

STATE BOARD OF MEDICAL,
EXAMINERS OF NEW JERSEY,
Plaintiff-Respondent,
vs.
CHARLES D. BAUDENDISTEL,
Defendant-Appellant.

On Appeal from
New Jersey Supreme
Court.

Brief of Plaintiff-Respondent

STATEMENT.

The defendant-appellant was charged with the violation of Section 10 of "An act to regulate the practice of medicine and surgery, &c." in that he practiced without a license. He was, however, a licensed osteopath and was a licensed chiropractor of this State. The case was tried before the First District Court of the City of Jersey City and the Court, at the conclusion of the testimony, found the defendant guilty and imposed the statutory penalty of \$500 for a second offense under the statute.

The Supreme Court upon certiorari affirmed the conviction of the defendant-appellant in the court below. An appeal is now taken to this court in order to test the legality of the defendant-appellant's conviction.

ARGUMENT.

I.

The Trial Court Did Not Err in Finding the Defendant-Appellant, a Licensed Osteopath and a Licensed Chiropractor, Guilty of Practicing Medicine and Surgery Without a License. The Supreme Court Did Not Err in Affirming the Determination of the Trial Court.

Chapter 271, P. L. 1915, Section 8, defines the practice of medicine and surgery in this State 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."

Section 10-C of the same act provides:

"In case any person shall, after conviction of any violation of this act be again convicted of another violation of this act or of continuing the violation for which he was previously convicted

he shall be liable to a penalty of five hundred dollars for each such violation or continuation, to be sued for and recovered in the manner above set forth."

A brief resume of the testimony will show that the acts committed by the defendant-appellant constitute a violation of this act. The plaintiff-respondent produced three witnesses. The defendant-appellant testified in his own behalf, but in no particular did he deny the State's testimony; so that the testimony of the State's witnesses stands unchallenged.

Witness Spruce testified that she visited the defendant on January 14 and 22, 1927. On the visit of January 14 she told the defendant-appellant she felt very nervous and sick all the time and was upset and didn't feel at all well. He told her that she had stomach trouble, liver trouble and rheumatism, and that he would fix her nerves up and then her stomach trouble, liver trouble and rheumatism would go away. He gave her a bottle which he called liniment and told her to use it externally. He gave her another bottle of liquid which he said was for her liver and stomach and told her to take a tablespoonful four times a day. He gave her a box of herbs and said they were for rheumatism and told her to steep a tablespoonful in a cup of boiling water and take it three times a day, especially before going to bed at night. He told her not to eat certain things.

On the visit of January 22, 1927, he told her to lie on a table and he got an electric lamp and put it all over her abdomen and kept it on about fifteen minutes and then he pressed with his fingers on different parts of her body. He told her all she needed was a bottle of liquid, indicating the one he gave her on a previous visit. He told her to take a tablespoonful four times daily.

Witness Smith testified that she visited him on January 14, 18, 22 and 28, 1927. She told him that she had a sick stomach and pimples and that she wanted to

get rid of them. He gave her a box of herbs and told her to take a tablespoonful in a cup of boiling water three times a day, especially at night. He gave her a bottle of liniment to rub on sore places and he told her that she had uric acid, rheumatism and bad blood. She also told him she had pain in her chest and he told her she had grippe. He told her to take a tablespoonful of Vick's Vaporub, but it in a basin of boiling water, put a towel over her head and inhale the fumes; take a good dose of his tea and she would be all right. He put an electric lamp all over her back and over her chest. While lying on the treating table he rubbed two kinds of liniment on her legs and back and he gave her a bottle of liquid and told her to take a tablespoonful four times a day, before and after meals.

On the visit of January 28, she again lay on the table and he felt her body all over and told her she was all puffed up due to the liver condition and that she needed lots of attention. He gave her a box of herbs and another bottle of medicine and told her to take a salt bath, using a half bag of ordinary table salt. He told her to take a tablespoonful of herbs steeped in a cup of boiling water three times a day.

Witness Hess testified that she visited the defendant-appellant on January 18 and 28, 1927. She told him she didn't feel well. He told her to sit down and he took her pulse and pressed on her hand and arm, and said she had lots of gas, stomach disorder, rheumatism, liver trouble and that she was inclined to be melancholic and worried considerably. He told her to take the herbs and steep a tablespoonful in hot water and drink some at night and what was left to drink during the day; if it was too strong to make it weaker and if too weak to make it stronger. He told her to be careful with her diet. He gave her a liniment that she should use at night and morning. He told her to take the stomach and liver remedies, which he had given her, before meals and before retiring, four times a day. He gave her two

bottles of liquid on the first visit and told her to come back in about nine days.

On the visit of January 28, 1927, she told him she had a stiff neck and her back was a little sore and he rubbed some liniment on her neck and chest and said it was a rheumatic condition and a little cold. He told her to continue her medicine and herbs and liniment and he told her she would be all right. He also gave her a box of stomach remedies and herbs.

Chapter 271, P. L. 1915, Section 9, in part provides:

"The prohibitory provisions contained in this act as amended shall not apply to * * * the practice of osteopathy as defined in an act entitled 'An act to regulate the practice of osteopathy in the State of New Jersey, and to license osteopathic physicians to practice in this State and punish persons violating the provisions thereof,' etc."

Chapter 217, P. L. 1913, Section 6, defines the practice of osteopathy as follows:

"A method or system of healing whereby displaced structures of the body are replaced in such a manner by the hand or hands of the operator that the constituent elements of the diseased body may reassociate themselves for the cure of the disease."

Chapter 4, P. L. 1920, Section 1, 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 position 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 expressions of which were formerly excessive or partially lacking—named disease.”

Treatments by an osteopath or by a chiropractor are limited by statute to the use of the hands and must be kept within that limitation. Our courts have recently made this clear.

The Supreme Court in the case of *State Board of Medical Examiners v. De Young*, 140 Atl. 676 (affirmed by the Court of Errors and Appeals):

“The contention of the defendant is that one who obtains a license to practice osteopathy has by the terms of the Act (P. L. 1913, 388) and its supplements, studied such subjects as would qualify him to give electric treatments. This argument is perhaps persuasive as to why osteopathy should by law be permitted to give electric treatments, but unsound as to their having under the statutes pertaining to the practice of osteopathy the legal right to do so. Under the law the osteopath is limited in his treatment to the manipulation of the human body by hand so as to bring all parts thereof into the proper position.”

The Supreme Court in the case of *State Board of Medical Examiners v. Baudendistel*, 140 Atl. 886 (this case on appeal), at page 887, said:

“The prosecutor made no attempt to refute the charges against him and only offered in his defense a license to practice osteopathy issued by the State Board to him, on January 12, 1917, and also an official license issued to him to prac-

tice chiropractics, by the State Board of Chiropractor Examiners, on November 22, 1920. The defense then rested its case and contended, and now contends here, that under the license granted to the prosecutor, to practice osteopathy, the acts complained of and testified to by the witnesses, did not come within the inhibition of Section 10 of the statute alleged to have been violated, since osteopaths were expressly excluded from the application of the prohibitory provisions regulating the practice of medicine and surgery, by virtue of Section 9 of the act.

“We think the practice of osteopathy is confined to the manipulation of the human body by applying the hands only to the body of the patient. See *State v. Herring*, 70 N. J. L. 34.”

“Judgment is affirmed, with costs.”

The Supreme Court, in the case of *State Board of Medical Examiners v. Livesey*, 140 Atl. 444 (affirmed by the Court of Errors and Appeals), said:

“At the trial it appeared that the defendant was 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, according 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 machine; 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.

“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."

II.

The Amount of the Penalty Awarded the Plaintiff-Respondent Against the Defendant-Appellant is Not Excessive and Unwarranted Under the Complaint Filed Herein.

The complaint (Case, p. 4) alleges a prior conviction of the defendant-appellant. The record of this conviction was offered in evidence at the trial. The statute upon conviction of a second offense provides a penalty of \$500. The defendant-appellant was fully apprised of the nature of the charge against him and particularly of the fact that the plaintiff-respondent sought to prove a second offense against him. The statute, and not the complaint, fixed the amount of the penalty. The fact that the complaint alleges that the defendant-appellant incurred a penalty of \$200 is not material. The form of the complaint is in strict compliance with the statute and the guilt of the defendant-appellant having been established for the second offense, the imposition of the penalty of \$500 was proper and lawful.

It is respectfully submitted that the judgment of conviction below should be affirmed.

EDWARD L. KATZENBACH,
Attorney-General of New Jersey,
Attorney of Plaintiff-Respondent.