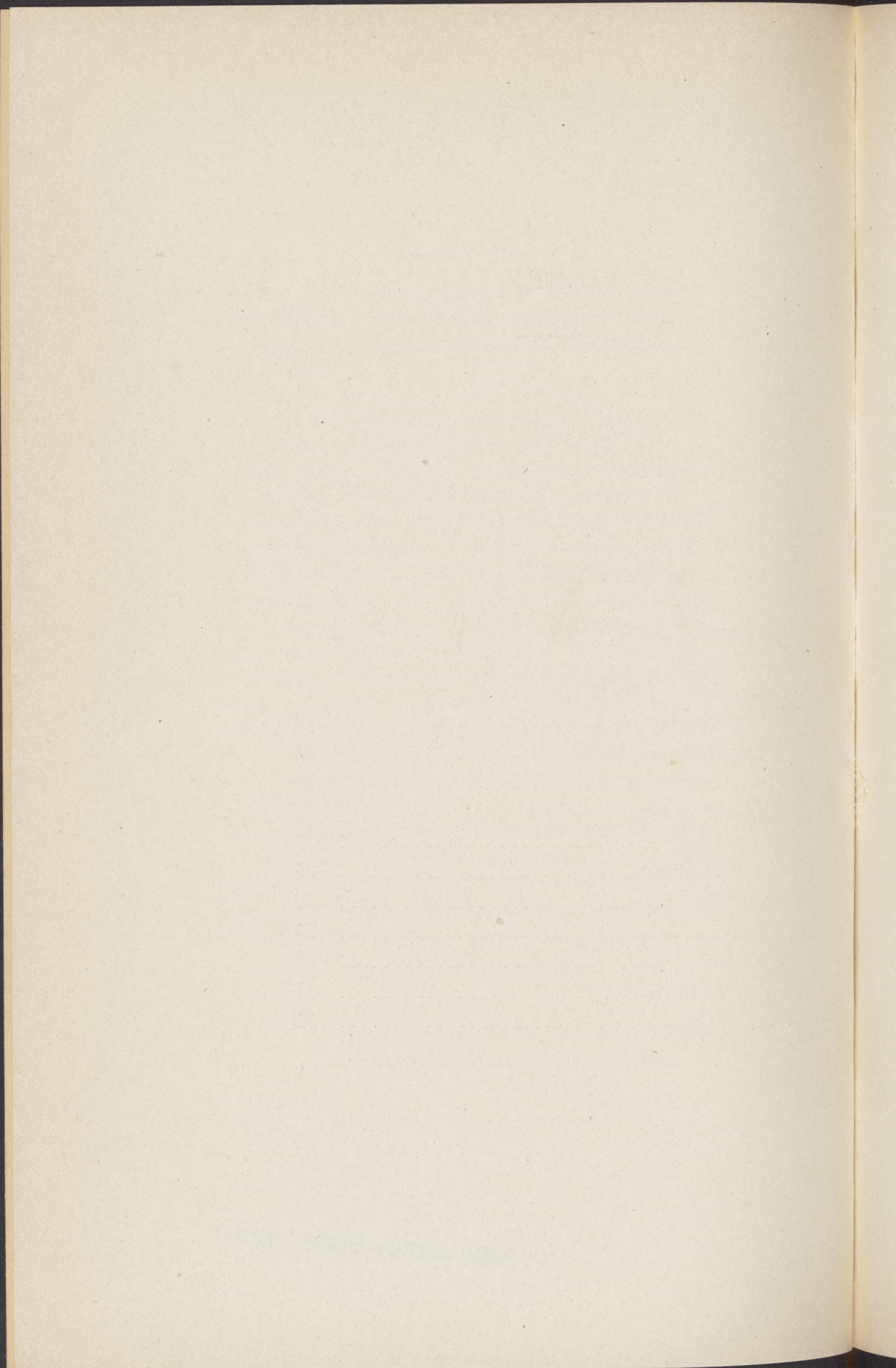


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NEW JERSEY

Court of Errors and Appeals

STATE BOARD OF MEDICAL EXAM- INERS OF NEW JERSEY, <i>Plaintiff,</i>	}	On Certiorari.
<i>vs.</i>		
ELIZABETH DUSSINGER, <i>Defendant.</i>		

WRIT

NEW JERSEY, ss.

THE STATE OF NEW JERSEY TO CECIL H. MACMAHON,
ESQUIRE, JUDGE OF THE FIRST DISTRICT COURT OF 10
THE CITY OF NEWARK:

GREETING:

We being willing, for certain reasons, to
be certified of the determination or judgment
[L. S.] given and made before you in a certain pro-
ceeding brought against Elizabeth Dussinger
at the suit of the State Board of Medical
Examiners of New Jersey, do command you that you send
under your seal to our Justices of the Supreme Court
of Judicature of the State of New Jersey, on the 18th 20
day of June next, the proceedings, testimony, exhibits,
determination of 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.

Witness, William S. Gummere, Esquire, Chief Justice
of our Supreme Court, at Trenton, this 29th day of May,
A. D. nineteen hundred and thirty.

FRED L. BLOODGOOD,
Clerk.

WILLIAM A. STEVENS,
Attorney General,
Attorney for State Board of
Medical Examiners of New
Jersey, Prosecutor.

10

The within writ is allowed.

J. L. BODINE, *J. S. C.*

A true copy.

FRED L. BLOODGOOD,
Clerk.

NEW JERSEY SUPREME COURT.

20	STATE BOARD OF MEDICAL EXAM- INERS OF NEW JERSEY, <i>Plaintiff,</i> <i>vs.</i> ELIZABETH DUSSINGER, <i>Defendant.</i>	}	On Certiorari.
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**RETURN TO WRIT BY FIRST DISTRICT COURT
OF THE CITY OF NEWARK**

(Filed June 12, 1930)

30

The proceedings, testimony, exhibits, determination or
judgment with all things touching and concerning the
same as fully and as entirely as they remain in the First
District Court of the City of Newark, I do hereby certify
under the seal of this Court in the Schedule hereto an-
nexed as within I am commanded.

[SEAL]

CECIL H. MACMAHON,
Judge.

FIRST DISTRICT COURT, NEWARK, N. J.

WILLIAM A. STEVENS, Atty. Genl., Plaintiff's Attorney.

STATE BOARD OF MEDICAL EXAM-
INERS OF NEW JERSEY,

Plaintiff,

vs.

ELIZABETH DUSSINGER,

Defendant.

10

Plaintiff's Costs

Warrant \$2.90 Feb. 19

Listing Fee 1.50 Feb. 19

\$4.40

Order 1.00 Apr. 25

FOR A PENALTY

A Complaint was filed and a Warrant in the above stated cause was issued on the nineteenth day of February, 1930.

20

The Warrant was served and returned as follows:

I return this Warrant Feb. 19, 1930, duly served, having taken the Defendant into custody and produced her in Court.

JOSEPH WEINBERGER,

Constable.

Feb. 19/30. The defendant was brought before the Court. The Complaint was read to the defendant, whereupon she did enter a plea of Not Guilty and deposited with the Clerk cash bail in the amount of \$250.00 for appearance on March 4, 1930.

30

Mar. 4/30. This Cause was adjourned to April 1, 22.

Apr. 22/30. The Plaintiff and the Defendant appearing, the cause was tried and determined at this time.

William Davenport sworn as stenographer.

Irene Hutchinson, Faustina Hess and Lillian Walters sworn for the plaintiff. Certificate in evidence.

Defendant sworn.

The evidence being closed the Court rendered its verdict finding the defendant "Not Guilty." Whereupon the defendant was released from custody.

Apr. 25/30. Order filed that the bail in the amount of \$250.00 deposited by Elizabeth Dussinger be returned to G. Vogelsburg, the bailor.

10 Apr. 28/30. Received from Louis Hecht, Clerk 1st Dist. Court, Newark, check in the sum of \$250.

MACLYN S. GOLDMAN,
Attorney for G. Vogelsburg.

STATE BOARD OF MEDICAL EXAM-
INERS OF NEW JERSEY,

Plaintiff,

20 *vs.*

ELIZABETH DUSSINGER,

Defendant.

} Complaint.

COMPLAINT

STATE OF NEW JERSEY, }
COUNTY OF MERCER, }

ss.

30 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 December, nineteen hundred and twenty-nine, and January, nineteen hundred and thirty, at East Orange, in the County of Essex and State of New Jersey, one Elizabeth Dussinger of East Orange, in the County of Essex 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 Elizabeth Dussinger 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 eight 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, all of which is contrary to and in violation of said section ten of said act and against the form of said statute. 10

Deponent therefore says that the said Elizabeth Dussinger 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 violation, and prays that the said Elizabeth Dussinger may be apprehended and dealt with according to law. 20

CHARLES B. KELLEY.

Sworn and subscribed before me this 7th day of February, A. D. nineteen hundred and thirty.

AGNES E. SERRIDGE,

Notary Public of N. J.

ESSEX COUNTY, ss.

The State of New Jersey to any Constable of the County of Essex or to the Sergeant-at-Arms of the First District Court of the City of Newark or to the Inspector of the State Board of Medical Examiners of New Jersey. 30

WHEREAS, Proof has been made before me under oath that during the months of December, nineteen hundred and twenty-nine, and January and February, nineteen hundred and thirty, at East Orange, in the County of Essex and State of New Jersey, one Elizabeth Dussinger of East Orange, in the County of Essex and State of New Jersey, did violate the tenth section 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 that the said Elizabeth Dussinger 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.

You are hereby commanded to take the body of the said Elizabeth Dussinger so that you have her forthwith before the First District Court of the City of Newark at the City Hall Annex in said City of Newark, in the County of Essex 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.

Witness, Cecil H. MacMahon, Esquire, Judge of the First District Court of the City of Newark, this nineteenth day of February, A. D. nineteen hundred and thirty.

LOUIS HECHT,
Clerk.

FIRST DISTRICT COURT OF THE CITY OF NEWARK.

NEW JERSEY BOARD OF MEDICAL
EXAMINERS,

Plaintiff,

vs.

ELIZABETH DUSSINGER,

Defendant.

ORDER TO RETURN BAIL

10

(Filed April 25, 1930)

It appearing to the Court in the above case Elizabeth Dussinger, the defendant, was found not guilty and that judgment therein was rendered against New Jersey Board of Medical Examiners, plaintiff; and it further appearing that the sum of two hundred and fifty dollars (\$250.00) was posted with the Clerk of this court as bail in the above entitled cause;

It is on this 25th day of April, 1930, ORDERED that the said Elizabeth Dussinger be released and discharged from any and all custody, the said bail cancelled of record and that the said bail in the said sum of two hundred and fifty dollars (\$250.00) be returned to G. Vogelsburg, the bailor.

20

CECIL H. MACMAHON,
*Judge of the First District Court
of the City of Newark.*

I hereby consent to the entry of the above Order.

30

ELIZABETH M. DUSSINGER,
Defendant.

FIRST DISTRICT COURT OF THE CITY OF NEWARK.

STATE BOARD OF MEDICAL EXAM-
INERS OF NEW JERSEY,

Plaintiff,

vs.

ELIZABETH DUSSINGER,

Defendant.

10

TESTIMONY

April 22, 1930.

Before Honorable Cecil H. MacMahon, J.

Appearances—Robert Peacock, Esq., for Plaintiff;

Maclyn Goldman, Esq., for Defendant.

Mr. Peacock—I offer in evidence certificate of the State Board of Medical Examiners showing it has not issued a license to Elizabeth Dussinger to practice medicine in this State.

20

IRENE HUTCHINSON, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Q. Do you know Elizabeth Dussinger? A. Yes.

Q. Is this the lady sitting here (indicating the defendant)? A. Yes.

Mr. Goldman—At the outset, I would like Mr. Peacock, if it is possible, not to lead the witness.

30

The Court—That is the defendant, is it not? That is the defendant?

Mr. Goldman—Yes.

Q. Where does this defendant live?

A. 67 South Munn Avenue, East Orange, N. J.

Q. What character of house is it?

A. The modern apartment house.

Mr. Goldman—I object to that.

The Court—What is your ground of objection?

Mr. Goldman—On the ground that it does not make any difference what kind of house it is.

The Court—Objection overruled. Do you admit she lived there?

Mr. Goldman—We do.

Q. On February 4, 1930, were you at this lady's place?

A. I was.

Q. Were there any signs there?

A. Yes, there is a sign just as we entered the door from the outside and it said "Massage." Then, quite a ways down the hall to the left of the entrance on the door as you enter there is a sign "Gymnasium and Massage." 10

Q. Were there any names attached to those signs?

A. I didn't notice any names.

Q. On this day, February 4, 1930, did you see this lady there? A. I did.

Q. Tell the Court what happened that day.

A. On February 4, 1930, Mrs. Hess and I went to Mrs. Dussinger and Mrs. Dussinger asked what kind of treatment I wanted. I said I didn't know. I would leave that to her. She said, "All right, go in the dressing room and put on a gown and lie down and take a rest." 20

I did while Mrs. Hess was being treated, and after she finished with Mrs. Hess, she requested me to follow her to another room, and opened the door of an electric cabinet and told me to step in. While sitting in the cabinet I talked to Mrs. Dussinger about my ills. I told her I had been having violent headaches, pains in my arms, legs and back.

Mr. Goldman—I object to what Mrs. Dussinger told her. 30

The Court—On what grounds?

Mr. Goldman—The usual objection of a conversation that somebody had with this lady on the stand.

The Court—Who is this somebody?

Mr. Goldman—Whoever it was that was speaking to Mrs. Hess.

The Court—Who is it you are objecting to her speaking to?

Mr. Goldman—Anyone.

The Court—Does that include Mrs. Dussinger, the defendant.

Mr. Goldman—It does not.

The Court—That is the only person she is connected with, Mrs. Dussinger. You may withdraw your objection.

Q. Proceed and tell the Court what Mrs. Dussinger said to you after you told her about your ills.

10 A. She looked directly into my eyes and said, "Your condition appears to be menopause."

I said, "Do you really think that is the cause of my trouble?" and she said, "Oh, positively. You have pelvic trouble that is causing pressure on your spine and that is why you have headaches."

20 I sat in the cabinet about ten minutes and moisture appeared on my body. She told me to step out under the shower and she turned on the warm spray. After drying she called me back to the room where Mrs. Hess was resting. She told me to get up on that table and examined me. She shook something from a bottle all over my body and started to manipulate.

Q. What part of your body did she manipulate?

A. My whole body, from my toes to the crown of my head.

Q. What was this liquid she placed on your body?

30 A. I detected the odor of alcohol and I asked her if I did not detect the odor of alcohol and she said, "Yes, you did. I am using the alcohol for massage." She picked up a peculiar instrument and attached it to the wire in the ceiling, to an electric socket over where I was lying and which chirped along accompanied with a slight tingling.

Q. Do you know whether that was electricity?

A. I know it was electricity the minute I felt it tingling.

Q. Who used that electrical instrument on your body?

A. Mrs. Dussinger.

Q. For how long?

A. Ten minutes, I should think.

Q. The cabinet you were in, was there any electricity attached to that cabinet? A. Yes, sir.

Q. How long did you receive that treatment?

A. Ten minutes about.

Q. Who was with you at the time?

A. Just Mrs. Dussinger and I in that room; Mrs. Hess was in the room back of us resting.

Q. As you stepped out of the electric cabinet, what did you say, if anything, she did?

A. She turned on the spray.

10

Q. Before she turned on this spray, what did she do with the electric cabinet?

A. She turned off the current and told me to get under the shower, and then she turned on a warm spray after that.

Q. What did you see her do to Mrs. Hess that day?

A. I saw her give Mrs. Hess an electric vibrator massage and also an electric lamp.

Q. Where did she use the electric lamp on Mrs. Hess?

A. I think she used it on some part of her, but just where I saw it I couldn't say.

20

Q. Did she charge you for that treatment?

A. Yes, four dollars.

Cross-Examination—By Mr. Goldman.

Q. Did you pay her four dollars? A. Yes.

Q. Did you give the money to Mrs. Dussinger?

A. I gave the money to Mrs. Dussinger.

Mr. Goldman—No further questions.

Q. (By the Court.) What is your age?

30

A. Forty-eight.

FAUSTINA HESS, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination—By Mr. Peacock.

Q. How old are you? A. Fifty-two.

Q. On February 4, 1930, were you with Mrs. Hutchinson at the defendant's home? A. I was.

Q. Is this the lady right here you saw that day (indicating)? A. Yes.

Q. Did you see any electrical apparatus in her home?

A. Yes.

Q. What was it?

A. Well, it was an electric cabinet, two large lamps, and a vibrator.

Q. What kind of lamps were they?

A. Electric lamps, large, were sun ray lamps.

10 Q. Did you make any complaint to Mrs. Dussinger of any ailment at that time?

A. Yes, I told her I had a little swelling on my neck and it had been paining for some time and running down into my shoulder.

Q. Did she make any examination?

A. She could see it was a little swollen.

Q. (By the court.) Did she make any examination of you? A. Well, not a physical examination.

20 Q. After you told her you had a pain in the neck, what did she do and say?

A. She asked me how long a time I had it and she said it was the same thing as neuritis, and she said, "Did you have a cold?" and I said, "Yes, I did have a cold," and I said, "Do you think your treatment will help me," and she said, "Surely, it would." She told me to disrobe and I went into the cabinet and I was in there about fifteen minutes until I was perspiring freely.

Q. What kind of cabinet was it?

30 A. An electric cabinet with a lot of electric lights inside.

Q. Did you receive an electrical treatment in the cabinet? A. Yes.

Q. Who turned the electric on?

A. Mrs. Dussinger.

Q. Who turned it off? A. Mrs. Dussinger.

Q. Was there anyone else in the room while you were there? A. Mrs. Hutchinson.

Q. After you were in the electric cabinet, what happened?

A. I stayed there for about fifteen minutes and she turned the switch off and I came out and went under the shower. I dried off after the shower and went up on a table and she massaged my entire body and used an electric vibrator.

Q. On what part of your body did she use this electric vibrator? A. Nearly all over.

Q. How long did she give you electric vibrator treatment? A. I should say perhaps ten minutes.

Q. Did she tell you why she was giving you electric vibrator treatment? 10

A. She said it was very good for circulation.

Q. Did she say anything else?

A. Then she used a very powerful lamp

Q. What kind of a lamp was that?

A. A sun ray lamp; she used that on my chest and back.

Q. How long did she keep the sun ray lamp on your body?

A. She had to time it. It was a very powerful lamp. I couldn't tell you exactly. 20

Q. Did she tell you why she was doing that?

A. She said that it was very penetrating and killed germs in the system.

Q. Did she charge you for that treatment?

A. Well, she wanted thirty dollars for ten treatments and I paid four dollars for that one treatment.

Q. Whom did you pay that to?

A. Mrs. Dussinger.

Cross-Examination—By Mr. Goldman 30

Q. When you saw Mrs. Dussinger for the first time, did she ask you any questions as to your condition?

A. Why, yes, she asked me for how long a time I had been having pain in my neck.

Q. But when you came to see her she didn't tell you anything about your illness? She didn't state to you what you suffered from?

A. No, she said it seems like neuritis. That is the word she used.

Q. Did she tell you she would prescribe a remedy?

A. She didn't say anything about prescribing; she said her treatment would be very beneficial.

Q. Did she tell you she would cure you?

A. I don't recall her using the word "cure."

ERMA SPRUCE, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

10 *Direct Examination—By Mr. Peacock*

Q. Do you know the defendant? A. Yes.

Q. Do you know where she lives?

A. 67 South Munn Avenue, East Orange.

Q. On January 3, 1930, were you at her place?

A. Yes.

Q. Who was with you? A. Mrs. Walters.

Q. Did you talk to the defendant that day? A. Yes.

Q. And what apparatus does she have in her home that you saw?

20 A. She has an electric cabinet, a treating table, two electric lamps, and an electric vibrator.

Q. Do you know the names of those electric lamps?

A. One is an Alpine lamp and the other one I don't know the name of that.

Q. Did you make any complaint of being ill?

A. Yes, I told her I had a pain in my back and was always exhausted.

Q. What did she say after that?

30 A. She told me to undress and get into the electric cabinet, and she turned on the electricity and kept me in there thirteen minutes until I perspired; and she put a towel around my neck and gave me a glass of water and told me to get on the table in the other room, and she rubbed my body and put a powder on it and put a strong lamp with a tube of liquid in and threw a purple ray on my body.

Q. On what part of your body did she put that purple ray lamp?

A. All over me for just a few minutes because it was powerful.

Q. Did you feel any electrical effect in your body from that lamp?

A. I felt the heat. She put a rubber thing on and turned it on. She told me I had a toxic condition of the kidneys and sluggish organs. She also told me if I had any uric acid to take a quarter of a spoonful of bicarbonate of soda and that would eliminate it. I saw her treat Mrs. Walters.

Q. What did you see her do to Mrs. Walters?

A. She told her to get in the cabinet and told her to get on the table and she rubbed her and put this electric lamp on her and electric vibrator.

10

Q. On January 6, 1930, did you see the same defendant at the same place? A. Yes.

Q. Tell the Court what happened that day?

A. Mrs. Dussinger asked me how my back felt and if I felt exhausted after my treatment. She told me to undress and get in the electric cabinet and I stayed there about thirteen minutes. I then had a warm shower and she put a towel around my neck and gave me a drink of water and told me to get on the table, and she rubbed my whole body and put powder on it and put the Alpine lamp on me and put the electric vibrator on me and told me I needed three treatments at least a week, and charged me four dollars.

20

Q. How much did she charge you on the first occasion? A. Four dollars.

Q. Did you see her treat Mrs. Walters that day?

A. Yes, she put her in the electric cabinet, gave her a warm shower, rubbed her body, and put the electric lamp on it and the electric vibrator on her body.

30

Q. Did you see the same defendant on January 10, 1930, at the same place? A. Yes.

Q. What happened that day?

A. She told me to undress and get in the electric cabinet and kept me in there until I perspired freely, and wrapped a towel 'round my neck and gave me a glass of water, then put me under the warm shower and told me to get on the table and rubbed my body, putting goggles

on me and the Alpine lamp and a rubber thing on the electric vibrator.

Q. Where was that electric vibrator attached to?

A. She had a light in the ceiling and attached it to the socket.

Q. Did you feel electricity from that vibrator?

A. Yes.

Q. Did you feel the electricity from the Alpine lamp?

A. I felt the heat.

10 Q. How many bulbs were in the electric cabinet, if you know? A. About thirty.

Q. Did you count them?

A. Yes; there are thirty or thirty-two.

Q. Did this lady say anything to you about further treatment?

A. On that visit she told me I needed three a week.

Q. How much did she charge you on the last visit?

A. Four dollars.

Q. Did you see her treat Mrs. Walters that day?

20 A. Yes.

Q. Did she give her electrical treatment that day?

A. Yes; she had her in the electric cabinet and had the electric lamp and electric vibrator, the three.

Q. Did you see Mrs. Walters pay her any money?

A. Yes, sir.

Q. How much did she pay her? A. Four dollars.

Mr. Peacock—You may cross-examine.

30 *Cross-Examination—By Mr. Goldman*

Q. Didn't you say to Mrs. Dussinger the first time you came to see her you wanted the electrical cabinet treatment because you were fat and wanted to reduce?

A. I did not.

Q. And about this bicarbonate of soda. Will you tell the Court how that conversation came up?

A. How the conversation came up, she was talking about my condition, and she noticed pimples on my face and she said, "If you have any uric acid, take a quarter of

a spoonful of bicarbonate once a day and that will eliminate it."

Q. She didn't tell you you had uric acid and you ought to take bicarbonate of soda? A. She did not.

Q. You said on direct examination in your testimony that you were in the cabinet for thirteen minutes?

A. I did.

Q. How did you know it was thirteen minutes?

A. Mrs. Dussinger stood there with her watch and timed it. 10

Q. Did you watch the watch?

A. I did; she had her hand on the cabinet in front of me like this (indicating).

The Court—The length of time is immaterial.
The cabinet was to produce perspiration.

LILLIAN WALTERS, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct Examination—By Mr. Peacock

Q. Mrs. Walters, do you know this defendant? 20

A. I do.

Q. On January 3, 1930, did you see her at 60 Munn Avenue, East Orange, N. J.? A. I did.

Q. Did you see any electrical apparatus at the defendant's house?

A. An electric cabinet, two electric lamps.

Q. What else?

A. A couch and a high table and electric vibrator.

Q. Did you talk to this defendant that day? 30

A. I did.

Q. Did you make any complaint of being ill?

A. I complained of my chest. I had a cough and a pain in my chest and my heart beat fast.

Q. What did this lady say after you told her these things?

A. She said I had palpitation of the heart.

Q. Who was with you at that time?

A. Mrs. Spruce.

Q. What did she do?

A. She gave me a towel and told me to disrobe and get in the electric cabinet and she turned it on and I perspired, and I was in there between ten and fifteen minutes and she told me to get under the shower and told me to get on a high table and she massaged my body and put a strong electric lamp on different parts of my body, over my chest, limbs, and back, and then she massaged my body and she brought out what she called a vibrator and run that over my body—an electric vibrator.

10 Q. Did you receive electric treatment with that vibrator?

A. Yes, I felt electric treatment from the vibrator.

Q. (By the Court.) You felt the vibration of the vibrator? A. Yes.

Q. Do you know what kind of lamp she used on your body? A. She said "Alpine."

Q. (By the Court.) How old are you?

A. Forty-one.

20 The Court—Witnesses for the State, including this one, are all professional witnesses employed by the State.

Q. Who was with you at the time? A. Mrs. Spruce.

Q. What did you see her do to Mrs. Spruce?

A. Put her in the electric cabinet, shower and electric vibrator.

Q. On January 6, 1930, did you see the same defendant? A. I did.

Q. What happened that day?

30 A. She put me in the cabinet and shower and massaged me and used the electric vibrator and a strong electric lamp and put goggles on my eyes before this lamp.

Q. How much did she charge you for the first treatment? A. Four dollars.

Q. How much for this other treatment?

A. Four dollars.

Q. Did you see her giving treatment to Mrs. Spruce that day? A. The same kind of treatment.

Q. On January 10, did you see the same defendant at the same place? A. I did.

Q. What happened that day?

A. The electric cabinet, shower, electric vibrator, and strong lamp.

Q. How much did she charge you for that treatment?

A. Four dollars.

Q. Were there any arrangements for further treatments? A. There was.

Q. What arrangements did you make for that?

A. The thirteenth.

Q. Who told you to come back on the thirteenth?

10

A. Mrs. Dussinger.

Q. Did you see Mrs. Spruce receive the same character of treatment on January 10 as on other days?

A. The same kind of treatment.

Q. How much did Mrs. Dussinger charge you this day? A. Four dollars.

Cross-Examination—By Mr. Goldman

Q. When you came to see Mrs. Dussinger, did she tell you after listening to your heart you had palpitation of the heart? A. No. 20

Q. Did she tell you anything was the matter with you?

A. She told me I had palpitation of the heart; that my heart beat fast.

Q. Did you have palpitation?

A. My heart beats fast. It is right now.

Q. When you came to see her you were nervous?

A. Why, yes, I was nervous.

Q. And your heart beats fast? A. Yes.

Q. Why did you tell her that your heart beats fast? 30

A. Because it was fast.

Q. Didn't you want her to look at your condition and give you her honest opinion?

A. If she would do so, yes.

Q. Did you tell her that so she should tell you you had a weak heart?

A. No, my heart was beating fast.

Q. After she told you you had a weak heart, she then said to you, "Get into this cabinet"? A. Yes.

Q. Did you think the cabinet was going to cure you?

A. No.

The Court—Don't answer that question.

Q. Did she tell you she would cure you? A. No.

Mr. Peacock—Plaintiff rests.

10 Mr. Goldman—At this time I would like to move to strike out the charges of violation of the Act, whatever those violations may be, during the month of December. There has been no proof of alleged treatments in December. It has been confined to January and February. I would also like to strike out, if there are any, allegations of diagnosis.

The Court—Proceed with your case.

ELIZABETH DUSSINGER, defendant, being duly sworn, testified as follows:

Direct Examination—By Mr. Goldman

Q. Mrs. Dussinger, what is your profession?

20 A. A trained nurse.

Q. Are you registered in this State?

A. No, I am not.

Q. Are you registered in any State?

A. In Connecticut.

Q. How long have you been in New Jersey?

• A. I have been in New Jersey since the 1st of December, 1929.

Q. Do you recall the first lady who testified for this case? A. Yes, I do, as Mrs. Day.

30 Q. Not the name she gave here in Court. A. No.

Q. What did she say to you the first time she came?

A. She came in to tell me she had been sick.

Q. This place you are employed at, what kind of place is that? A. A gymnasium and cabinet bath.

The Court—There is no evidence she is employed there, if employed there on a salary.

The Witness—I am, sir.

Q. Are you employed in this place as a masseuse?

A. Yes, I am on a weekly salary.

Q. And were you employed at the time the first lady came to see you? A. Yes, since January 1st.

Q. And in your employ, what are your duties?

A. To give cabinet baths, massage to ladies, and sun ray treatments.

Q. Do you recall when the lady came to see you, this lady with the glasses in the first row?

A. Yes, I do.

Q. Do you recall Mrs. Hutchinson?

The Court—She called herself Mrs. Day.

10

A. Yes.

Q. What did she say?

A. She said she had been sent by two previous ladies whom I knew as Mrs. Hulse and Mrs. Walters because they felt so well after the treatments she would like to have me treat her.

Q. What kind of treatment?

A. Electric cabinet bath and hand massage.

Q. Did she say anything to you about having anything wrong with her system?

20

A. Not until I saw her body.

Q. What did she say?

A. Well, she didn't say very much of anything. I noticed on observation she was thin and fragile looking. I don't question them as a rule.

Q. Did you question her? A. I don't recall.

Q. Did you tell her anything was wrong with her condition? A. Not until I saw her body.

Q. What did you tell her then?

A. I noticed there was a defect. I couldn't tell her what it was, I am not capable.

30

Q. You didn't look at her condition and then suggest a remedy, did you?

A. No, sir, I did not. I told her it was probably a menopause condition.

Q. You didn't offer anything to cure it?

A. No, I couldn't.

Q. Just answer the questions, please. Did you tell her to come back?

A. That was up to her.

Q. Did you tell her to come back? A. No.

Q. Did she give you the money for the treatment?

A. I don't recall.

Q. Was she in the room constantly while the other lady was there? A. No.

Q. Did you do anything but give her the electric treatment?

A. The electric bath, massage, vibrator, and sun ray. No massage on one limb.

10 Q. As to the second lady who testified, did she give you the name of Baker when she came to see you? She hadn't been there before? A. No.

Q. What did she say to you when she came?

A. She likewise said she was sent on recommendation of the other two ladies because they felt so well after their treatment.

Q. What did she tell you as to her condition?

A. I don't recall that she told me anything. She said that she was susceptible to cold and she had frequent
20 colds.

Q. Did you prescribe any remedies for the colds?

A. I did not.

Q. What made you send her to the electric cabinet bath?

A. Well, of course, they came for cabinet bath treatment and I simply gave her a cabinet bath treatment.

Q. In this bath do they stand up or sit down?

A. They sit down.

30 Q. If you were standing above this bath, could they see your wrist? A. Yes, they could.

Q. Could they see your watch? A. Yes.

The Court—How is that material, the thirteen minutes, if that is what you are driving at?

Q. Did you prescribe anything for her cold? A. No.

Q. Did you tell her you would cure her? A. No.

Q. Did she pay you? A. I don't recall.

Q. Now, as to the third lady? A. Mrs. Hulse.

Q. Did she give you the name of Mrs. Hulse?

A. Yes; she came with an advertisement she had cut out of the Newark Ledger for reducing that Mrs. Raysik had had in the Newark Ledger and she brought that with her and she said she thought she was too fat.

Q. So you gave her the cabinet treatment? A. Yes.

Q. She didn't tell you about her heart, did she?

A. No.

Q. Or she had pelvic trouble? A. No.

Q. You didn't suggest any remedy to cure any disease?

A. I didn't say I could cure it. I can't say whether I advised or suggested. 10

Q. Now, all you gave her was the cabinet treatment, shower, and massage?

A. Yes, and the vibration and sun ray.

Q. Now, the fourth lady? A. Mrs. Walters.

Q. The lady that said she had palpitation of the heart?

A. Yes.

Q. Did she tell you she had palpitation of the heart?

A. She told me her heart did beat fast and I told her she shouldn't pay any attention to it; that sometimes she caused it herself by thinking about her condition. 20

Q. Did you prescribe any remedies for it? A. No.

Q. All you gave her was the usual cabinet bath, shower, and massage?

A. The sun ray and vibrator.

Q. Did she pay you? A. I don't recall.

Q. Did you tell her to come back? A. No.

Q. Did you tell her it would be thirty dollars for a series of treatments? A. I might have. 30

Q. But you don't know? A. I don't know.

Q. I show you a copy of a letter written under the name of this institute for massaging and physical culture to the State Board of Medical Examiners on February 13, 1930. Is this a copy of the letter you caused to be sent to them?

Mr. Peacock—That is objected to.

The Court—Objection sustained.

Q. Did you ever write any letters to the State Board of Health asking what you could do under the statute?

A. Yes.

Mr. Peacock—I object.

The Court—On what ground?

Mr. Peacock—I object on the ground of anything she may have written.

The Court—The question is, “Did you write a letter to the State Board of Health.” She can say yes or no whether she wrote the letter.

Mr. Peacock—Objection withdrawn.

A. Yes.

10

The Court—Now, call for the letter if you want it.

Mr. Goldman—There is no sense calling for the letter, your Honor. I don’t think they have it.

The Court—I am not going to take your statement for that fact.

Mr. Goldman—Have you the letter?

Mr. Peacock—No.

Q. Did you receive an answer to this letter?

A. Yes, I did.

Q. When did you receive the answer?

20

A. About two weeks ago.

Q. What did they tell you?

The Court—No, where is the letter?

Mr. Goldman—You may cross-examine.

Cross-Examination—By Mr. Peacock

Q. When these ladies came to you they made complaints of ills, didn’t they?

A. I don’t recall that they made any complaints of any physical defects.

30

Q. One of them told you she had headaches or pains in the arm? A. I don’t recall.

Q. Why did you give them electric treatment?

A. Because we give them to people who come in.

Q. You had given them, each one of them, electric treatments on the days they named on the stand today?

A. Yes, sir.

Q. You gave them electric massage and the electric vibrator? A. Yes.

Q. You gave them treatment in the electric cabinet?

A. Yes.

Q. The electric sun ray lamp? A. Yes.

Q. Each one of the witnesses who have testified on the day they testified to you gave them electric treatment, is that correct? A. Yes.

Q. You say you don't recall whether they gave you any money? Do you deny that?

A. I don't recall. As a general rule they give it to Mr. Reysik.

Q. Do you deny it? A. I don't recall.

The Court—She does not deny it; she doesn't recall. 10

Q. Did the lady tell you she had heart trouble and did you give her electric treatment?

A. She was in the cabinet for treatment. I had taken her pulse and found it all right.

Q. Did you tell one of them she was suffering from menopause?

A. No, she told me she had been to many doctors and none of them had helped her and told her she was incurable and tried very hard for me to say the same. 20

Q. Did you tell one she had neuritis?

A. I don't remember.

Q. Did you tell one she had irritated kidneys?

A. No.

Q. You don't remember saying that at all?

A. No.

Re-direct Examination—By Mr. Goldman

Q. It is not you don't remember, you deny you said it?

A. I don't recall saying such a thing. I don't make a practice of it. 30

Q. Did you say it on those occasions?

A. I don't know, Mr. Goldman. It would be very unusual. I never diagnose a case and that would be diagnosing it.

By the Court.

Q. What is this place?

A. It is a gymnasium, cabinet bath, and massage.

Q. Who conducts it. A. Bruno Reysik.

Q. Under what name? It has no name?

A. He just signs his own name.

Q. Then it is under his own name? A. Yes.

Q. You have said several times in connection with this bath, washing and massage, the use of a sun ray lamp. What is this sun ray lamp?

A. It is a sun lamp that is applied for about two minutes application after a treatment.

Q. After what treatment?

10

A. After a massage.

Q. What is the purpose of this sun ray?

A. It is supposed to have a stimulating effect on the circulation.

Q. Stimulation by the application of warmth?

A. It is given for sun burn, but we don't give it for that length of time.

Q. Is it by application of warmth? A. Yes.

Q. Now, these electric cabinet baths, what are they put in there for? A. Sweating.

20

Re-cross Examination—By Mr. Peacock

Q. The sun ray lamp is a lamp that gives an electric ray to penetrate the body to give circulation.

The Court—Some people say it does. People who try to sell you one say it does.

Mr. Peacock—Can the witness answer the question?

The Court—No, she cannot. She is not qualified either as selling expert or as electrical expert.

30

Q. How long have you been using that sun lamp?

A. Since the first of January.

Q. Do you know what the purpose of the sun ray lamp is for?

Mr. Goldman—I object.

Q. Does that cause electricity to go into the body?

The Court—Don't answer the question. How can she tell you that?

Mr. Peacock—I am trying to find out.

The Court—She is not qualified as an electrical expert.

Mr. Peacock—May I ask her a few questions and try to qualify her?

The Court—Yes.

Q. Do you know what a sun ray lamp is for?

A. Yes.

Q. What is it for?

A. For countering irritations, for sun burn, and for increasing the circulation. 10

Q. Have you studied sun ray lamp and know what it is for? A. Yes.

Q. How long have you studied it?

A. I have been using one for two and a half years.

Q. Do you know the purpose of that lamp? A. Yes.

Q. Now, taking the fact you know the purpose of it and you studied it, does it not cause electricity to penetrate the body and to stimulate circulation?

Mr. Goldman—I object.

The Court—Objection sustained. 20

Mr. Goldman—Defendant rests.

Mr. Peacock—I ask for a directed verdict of guilty, your Honor.

The Court—Denied.

Mr. Peacock—I pray an exception.

The Court—If the State desires an opportunity to furnish a brief pointing out to me in what way this defendant has violated the statute, they may do so.

Mr. Peacock—I don't care to furnish any brief. 30
The Court of Errors and Appeals states that any person using electrical treatments, not a physician, violates the medical acts.

The Court—On the facts as I heard them here, there were no electrical treatments as such. All I find is that these women, who are regular professional witnesses and to my knowledge employed by the State for several years as investigators, in this case apparently went to this establishment. The

only signs testified to in the case is that it is a gymnasium and a place where massage is given. They asked for these baths—these so-called electrical baths. The only testimony that I have heard indicates that they were put in a cabinet where heat was applied by electric lamps. That heat made the body perspire and then the patient—not the patients, the dirty person in the bath—was given a warm shower. After the warm shower they were given an ordinary
10 massage. After the ordinary massage, vibration—a rapid patting, was applied by the use of a machine which was driven by electricity—the electric vibrator. Afterwards—for impressive purposes—the sun ray lamp, which supplies heat more rapidly than an ordinary lamp, was placed close to the body, and they were warmed up to the extent they parted with four dollars. That is all the treatment amounts to in this case. I find the defendant not guilty.

20 Mr. Peacock—I pray an exception.

I, William E. Davenport, a stenographer duly appointed to report stenographically the evidence given before the First District Court of the City of Newark, New Jersey, in the case of State Board of Medical Examiners of New Jersey, plaintiff, vs. Elizabeth Dussinger, defendant, do hereby certify that the foregoing is a true and correct transcript of the evidence given on the twenty-second day of April, 1930, before the Honorable Cecil H. MacMahon, Judge of the First District Court, Newark,
30 in said matter.

In Witness Whereof, I have hereunto set my hand and seal this twenty-sixth day of April, 1930.

WM. E. DAVENPORT.

I, Cecil H. MacMahon, Judge of the First District Court, Newark, New Jersey, do hereby certify that the foregoing is a transcript of the evidence given upon the trial of the case of State Board of Medical Examiners of New Jersey, plaintiff, vs. Elizabeth Dussinger, defendant, on the twenty-second day of April, 1930, as certified to by

William E. Davenport, the stenographer appointed to report such evidence stenographically.

In Witness Whereof, I have hereunto set my hand and seal this 28th day of April, 1930.

CECIL H. MACMAHON.

NEW JERSEY SUPREME COURT.

STATE BOARD OF MEDICAL EXAM-
INERS OF NEW JERSEY,

Plaintiff,
Plaintiff in Certiorari,
vs.

ELIZABETH DUSSINGER,

Defendant,
Defendant in Certiorari.

10

On Certiorari.

REASONS

(Filed July 18, 1930)

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 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 Court refused to direct a verdict of guilty. 30

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

Respectfully,

W. A. STEVENS,
Attorney General,
Attorney for State Board of
Medical Examiners of New
Jersey.

A true copy.

FRED L. BLOODGOOD,
Clerk.

NEW JERSEY SUPREME COURT.
No. 241, January Term, 1931.

STATE BOARD OF MEDICAL EXAM-
INERS OF NEW JERSEY,

Plaintiff,

vs.

ELIZABETH DUSSINGER,

Defendant.

10

PER CURIAM

(Filed April 9, 1931)

Submitted February 2, 1931. Decided 1931.

On Certiorari.

For plaintiff, William A. Stevens, Attorney General.

For defendant, Maclyn S. Goldman.

Before Justices Parker, Campbell and Bodine.

20

PER CURIAM—The writ of certiorari in this case brings up for review a determination of the First District Court of the city of Newark, that the defendant had not violated section 10 of an Act to regulate the practice of medicine, Pamphlet Laws 1894, p. 454, as amended.

The district court judge found that there were no electrical treatments given. The signs displayed indicated that the place was a gymnasium where baths and massage were given. The devices employed were baths, heat, massage and an electrical vibrator, together with heat

30

from a sun ray lamp.
After carefully examining the whole record, we reach the conclusion that the evidence supports the findings of the court below.

The writ will, therefore, be dismissed.

NEW JERSEY SUPREME COURT.

STATE BOARD OF MEDICAL EXAM-
INERS OF NEW JERSEY,

Plaintiff,

vs.

ELIZABETH DUSSINGER,

Defendant.

} On Certiorari

10

RULE ON AFFIRMANCE

The Court having inspected the transcript and proceedings of the First District Court of the City of Newark, returned with the certiorari in this cause, the reasons for reversing the judgment below, and heard the argument of counsel thereon, and having duly considered the same, DO ORDER that the judgment of the First District Court of the City of Newark be in all things affirmed, and the record be remitted to the Court below to be pro- 20
ceeded with according to law and the practice of said Court.

Entered August 22, 1931.

On motion of

W. A. STEVENS,

Attorney General,

Attorney of Plaintiff.

A true copy.

FRED. L. BLOODGOOD,

Clerk.

30

NEW JERSEY SUPREME COURT.

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

vs.

ELIZABETH DUSSINGER,
Defendant-Appellee.

10 On Certiorari .

NOTICE OF APPEAL

To Robert Silberman, Esquire, Attorney for Defendant:

TAKE NOTICE that the plaintiff, the State Board of Medical Examiners of New Jersey, appeals to the Court of Errors and Appeals from the whole of the judgment entered in this cause on the following grounds:

20 1. The Supreme Court affirmed the judgment of the First District Court of the City of Newark when such judgment should have been reversed.

2. The Supreme Court affirmed the First District Court of the City of Newark upon the ground that no electrical treatments were given, whereas the evidence shows that electrical treatments were given for physical conditions, and the judgment of the trial court should have been reversed.

30 3. The judgment of the Supreme Court was in other respects erroneous and illegal.

W. A. STEVENS,
Attorney General of New Jersey,
Attorney of Plaintiff-Appellant.

Service acknowledged September 9th, 1931.

ROBERT SILBERMAN,
Atty. for Defendant.

Filed September 11, 1931.

NEW JERSEY COURT OF ERRORS
AND APPEALS

STATE BOARD OF MEDICAL EXAMINERS OF NEW JERSEY,
Plaintiff-Appellant,

vs.

ELIZABETH DUSSINGER,
Defendant-Appellee.

10

Facts

This was an action in the First District Court of the City of Newark, brought to recover a penalty in favor of the Plaintiff against the Defendant on the ground that the Defendant violated the provisions of Section 10 of an Act of Legislature entitled "An Act to Regulate the Practice of Medicine and Surgery," approved May 22, 1894, as said Section 10 was amended by an act approved April 8, 1921, in the following respects, to wit:

That the Defendant commenced and continued the practice of medicine and surgery within the meaning of Section 8 of said act as amended by an act approved April 12, 1915, without having first obtained a license issued by the State Board of Medical Examiners of New Jersey.

At the trial of this case the Court found the defendant not guilty.

A writ of certiorari was taken to the Supreme Court and that Court affirmed the verdict of the District Court in finding the defendant not guilty. Opinion of Supreme Court, State of Case, page 30.

ARGUMENT

1

- 10 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 provides as follows:

- 20 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 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
- 30 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 faith-

curism", "mind-healing", "laying-on-of-hands", and other systems.

P. L. 1915, Page 482.

Any person hereafter commencing or continuing the practice of medicine and surgery in this State without first having obtained and filed the license herein provided for, or contrary to any of the provisions of this act, and any person who shall practice medicine or surgery under a false or assumed name, or who shall falsely impersonate another practitioner of a like or different name, or who shall buy, sell or fraudulently obtain any diploma as a doctor of medicine, or any medical license, record or registration, or any person, company or association, who shall employ for a stated salary or otherwise, or give aid or assist any person not regularly licensed to practice medicine or surgery in this State, to practice medicine or surgery in this State, or who shall violate any of the provisions of this act, shall be liable to a penalty of two hundred dollars, which penalty shall be sued for and recovered by and in the name of the State Board of Medical Examiners of New Jersey. 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 provision 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 days; such process shall state what provision of the law is alleged to have been violated by the defendant or defendants, and on the return of such process, or at any time to which the trial shall be adjourned, the said Court shall proceed in a summary manner, without a jury to hear testimony and to determine and give judgment in the matter without the filing of any pleadings for the plaintiff for the recovery of such penalty with costs, or for the defendant, and the said Court shall, if judgment be rendered for the plaintiff, cause any such defendant, who may refuse or neglect to forthwith pay the amount of the judgment rendered against him and all the costs and charges incident thereto, to be committed to the county jail for any period, not exceeding one hundred days; that the officers to serve and execute all process under this act shall be the officers authorized to serve and execute process in said courts; that the District Court or the Court of Common Pleas, shall have power to adjourn the hearing or trial in any case from time to time, but in such case, except in cases in which the first process was a summons, it shall be the duty of the Judges of the District Court or the Court of Common Pleas, to detain the defendant in safe custody unless he

shall enter into bond to the said State Board of Medical Examiners of New Jersey, with at least one sufficient surety in double the amount of the penalty claimed, conditioned for his appearance on the day to which the hearing shall be adjourned and thence from day to day until the case is disposed of, and then to abide by the judgment of the said Court, and such bond, if forfeited, may be prosecuted by the said Board.

P. L. 1921, Page 708.

10

The method of treatment used by the defendant-appellant was what is commonly known as electrical treatments.

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 being²⁰ 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 words³⁰ 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.

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

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

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. Burdette, 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 came 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 LILLIAN WALTERS testified that she diagnosed her case as palpitation of the heart, put electric lamp on her body, massaged her body, used electric vibrator, gave her electric treatment from an alpine lamp.

and that she did this to her on different dates, on January 3d, January 6th and January 10th,

State of Case, p. 19,

and that she saw the defendant give the same electrical treatments to Miss Spruce,

State of Case

FAUSTINA HESS testified that the defendant had¹⁰ electrical cabinet, electric lamps, sun ray lamps, electric vibrator at her place of business, and she said her condition was the same as neuritis,

State of Case, p. 12,

and on February 4th, 1930, she gave her electrical treatments by electric vibrator, by electric lamp and by sun ray lamp.

20

State of Case, p. 13.

IRMA SPRUCE testified that the defendant on January 3d, 1930, had electric cabinet, treating table, 3 electric lamps and an electric vibrator in her place of business.

She said she had toxic condition of the kidneys and sluggish organs and prescribed carbonate of soda. She used electric lamps on her, and electric³⁰ vibrator.

State of Case, p. 15.

IRENE HUTCHINSON testified that she diagnosed her case as pelvic trouble, that is causing pressure on her spine and that caused her headache, and that

she manipulated her whole body; she used alcohol on her body.

State of Case, p. 10,

and she gave her electrical treatments by electric lamps and electric vibrator,

State of Case, p. 11.

10

The defendant convicted herself by the following admissions:

The defendant, Elizabeth Dussinger, testified that she admitted that she told one of these witnesses that she probably had a *menopause condition*.

She gave her *electric bath*, *massage*, *vibrator* and *sun ray*,

State of Case, p. 22,

20

and that she gave them *cabinet baths*,

State of Case, p. 23,

and that she gave them cabinet treatments, vibration and sun rays,

State of Case, p. 24,

30 and that she admitted on cross examination as follows:

Q. Why did you give them electric treatment?

A. Because we give them to people who come in.

Q. You had given them, each one of them electric treatments on the days they name on the stand to-day?

A. Yes sir.

Q. You gave them electric massage and electric vibrator?

A. Yes.

Q. You gave them treatment in the electric cabinet.

A. Yes.

State of Case, p. 26.

Q. The electric sun ray lamp.

10

A. Yes.

Q. Each one of the witnesses that have testified on the day they testified to you gave them electric treatments, is that correct?

A. Yes.

State of Case, p. 26.

She further admitted treatment when she said, I had taken her pulse and found it all right, 20

State of Case, p. 26.

She admitted that the sun ray lamp is supposed to have a stimulating effect on the circulation.

State of Case, p. 27.

It has been settled in this State on many occasions that the act complained of by this complainant is a violation of the Medical Act and the treatment by this defendant of these witnesses by giving them electrical treatment without a license to practice medicine in this State is a Violation of the Law. 30

State vs. Johnson, 141 Atl. 591; State vs. Lezenby, 140 Atl. 444; State vs. Blausschmidt, 142 Atl. 459; State vs. O'Neil, 143 Atl. 814; State vs. Johnson, 141 Atl. 581; State vs. DeYoung, 140 Atl. 676; affirmed, 143 Atl. 813; State vs. Kirsch, 140 Atl. 312.

THE DEFENDANT VIOLATED THE ACT BY
THE FOLLOWING DIAGNOSIS MADE BY HER IN
THIS CASE:

10

In this case we find the defendant gave a diagnosis of the physical condition of each witness; she diagnosed Mrs. Walters' case as palpitation of the heart, page 18; she diagnosed Mrs. Hesp's case as neuritis (State of the Case, page 12); she diagnosed Irma Spruce's case as a toxic condition of the kidneys, sluggish organs (State of the Case, page 15); she diagnosed Mrs. Hutchinson's case as pelvic trouble causing pressure on the spine, which causes
20 headaches (State of the Case, page 10).

And our courts have held that anyone who pretends to diagnose, or who does diagnose a condition, is practicing medicine without a license, citing as follows:

State Medical Board vs. Hirsch, 140 A. 312.

State Medical Board vs. Heintz, Decided Jan. Term, 1931.

30

State Medical Board vs. Johnson, 141 A. 591.

State Medical Board vs. Walker, 140 A. 420.

THE DEFENDANT VIOLATED THE ACT BY
THE FOLLOWING PRESCRIPTIONS:

The defendant prescribed treatment for the illness of the witnesses that have testified in this case.

In the case of Mrs. Hesp she testified that electrical treatment was for good of the circulation (State of the Case, page 13, line 20). And for the same witness she said her treatment would be beneficial for this condition (State of the Case, page 14, line 14). For Irma Spruce, she prescribed bicarbonate of soda, she said that would eliminate the sluggish condition of the kidneys, and sluggish organs (State of the Case, page 15, line 20). She also prescribed three treatments a week for Miss Spruce (State of the Case, page 16, line 30). 10

It has been settled in this State on many occasions that the act complained of by this complainant is a violation of the Medical Act, and the treatment by this defendant of these witnesses by giving them electrical treatment without a license to practice medicine in this State is a violation of the law.

Our Courts have held that by attempting to diagnose physical ailments, giving electrical treatments without legal warrant, is a violation of the Medical Act. 20

In *State v. Johnson*, 141 Atl. 591, the Court held:

“Whether or not the defendant prescribed or gave Medicine was manifestly in dispute in the evidence, but beyond doubt he did give electrical treatments for various ailments.” 30

In *State Board vs. Lezenby*, 1 N. J. Misc., it was held, “that the giving of electrical treatment was a violation of the Medical Act, and a judgment in favor of the accused was reversed.”

10 In *State Board vs. Lizley*, 140 Atl. 444; *State Board vs. Lezenby*, 1 N. J. Misc. 20. "Electric treatment constitutes a violation of the medical act. We cannot see that under the provisions of the Medical Act it can make any difference by whom electrical treatments were given; if not given by a physician duly licensed to practice medicine and surgery under the Medical Act of 1894, and its amendments and supplements, with reference to the giving of electrical treatment, we feel that we are controlled by the case of *State Board vs. Lezenby*, and the giving of electrical treatment to a patient is a violation of section 10 of the Medical Act of 1894 and as amended by the act of April 12, 1905, P. L., page 484, and P. L. 1921, page 708."

20 *State Board vs. Young*, 140 Atl. 676, "A licensed Chiropractor using an electrical machine, or a concusser, a light that shines in the eyes, if connected with electric current, is a violation of the Medical Act, and the Court held the defendant guilty of using electrical treatment even though he was a chiropractor, and said that we are controlled by such cases as *State Board vs. Young*, 140 Atl. 676; *State Board vs. Lizley*, 140 Atl. 444, and confirmed the conviction, citing, *State Board vs. Plechschmidt*, 142 Atl. 529: "A person not a licensed physician has no right to use electrical appliances." *State Board vs.*
30 *O'Neill*, 143 Atl. 14. This case cites the Case of *State Board vs. Young*, and its opinion of the Supreme Court of 140 Atl. 676, in which the Court of Errors and Appeals affirmed said decision, that a person not a legally licensed physician has no right to use electrical instruments. The *Young* case is affirmed in the Court of Errors and Appeals, in 143 Atl. 813.

So the Supreme Court of New Jersey and the Court of Errors and Appeals of New Jersey have said, regardless of who the person is, whether a licensed chiropractor or a licensed osteopath, or any person who is not a licensed chiropractor or licensed osteopath, that giving the treatment to any witness or any patient by electrical treatment, by a light to shine in the eyes, or by an ultra violet ray light, or by electric vibrator, or by any other means of electrical treatment, is guilty of a violation of the Medical Act. 10

In this case, the defendant having given electrical treatment by cabinet, by electric lamps, by electric light, by electric vibrators, and her own admissions that she used electricity for the purposes of relieving conditions of people plaintiff shows her to be guilty of a violation of the Medical Act of this State.

In conclusion, we have examinations by the defendant, having taken the pulse of the defendant, having prescribed medicine for them, having given them electrical treatment, all of which are violations of the Medical Act, and the decisions of the Court below finding her not guilty should be reversed, and the decision of the Supreme Court affirming the decision of the Court below should be reversed. 20

There is no evidence to support the finding of the trial Court. 30

Martin v. Brown, 80 N. J. L., 136; Upton v. Slater, 83 N. J. L., 373; Closter Dairy Farms v. N. Y. Central R. R. Co., 88 N. J. L., 557; Goldberg v. Reed, 97 N. J. L., 170.

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

WILLIAM A. STEVENS,
Attorney General,

ROBERT PEACOCK,
Asst. Atty. General,

New Jersey Court of Errors and Appeals

STATE BOARD OF MEDICAL EXAM-
INERS OF NEW JERSEY,

Plaintiff-Appellant,

vs.

ELIZABETH DUSSINGER,

Defendant-Appellee.

This is an appeal from an order of the Supreme Court, affirming a judgment of the First District Court of Newark in finding the defendant-appellee not guilty.

Facts.

This action was instituted by the plaintiff-appellant in the First District Court of the City of Newark to recover from defendant-appellee a penalty for the alleged violation of the provisions of Section 10 of an Act of the Legislature entitled "An Act to Regulate the Practice of Medicine and Surgery," approved May 22, 1894, as amended.

The complaint filed in the District Court charged the defendant-appellee with the practice of medicine and surgery within the meaning of Section 8 of said act, without having first obtained and filed a license for such practice as provided by said act.

The District Court found that the establishment where the alleged violation of the law took place, was a gymnasium and a place where massages are given; that the treatments consisted in the giving of electric cabinet baths where heat is applied by means of electric lamps; that

a warm shower is given followed by an ordinary massage and for impressive purposes a sun ray lamp is used which supplies heat more rapidly than an ordinary electric lamp; that the only signs testified to in the case indicated the place to be a gymnasium and a place where massages are given. State of Case, page 28.

The District Court found that, electrical treatments prohibited by the act were not given and found the defendant-appellee not guilty.

The findings of the District Court were reviewed by the Supreme Court on a writ of certiorari and the judgment of the District Court was affirmed.

ARGUMENT.

I.

The defendant-appellee did not give electrical treatments prohibited by the act.

The statute which the defendant-appellee was charged with violating is Section 10, Chapter 271, Laws of 1915, page 482 (Cumulative Supplement of Compiled Statutes, Volume 1, page 1870) provides 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 'faith-curism,' 'mind-healing,' 'laying-on-of-hands,' and other similar systems."

The defendant-appellee does not dispute that the act applies to those who actually practice medicine and surgery without a license as that offense is defined in the statute; nor does she question the right of the Legislature to define the practice of medicine. The defendant-appellee insists however, that the acts she is charged with, do not come within the inhibition of the statute. Let us see whether they do.

IRENE HUTCHINSON, a witness called by the appellant, testified that the place where the alleged treatments were given is a modern apartment house; that there are signs "Massage" and "Massage And Gymnasium" on the doors of the apartment, State of Case, page 8, and that on a certain occasion she went to appellee's place, complained of violent headaches, &c., and was given an electric cabinet bath, warm shower and a massage, State of Case, page 10.

FAUSTINA HESS, another witness called by appellant, testified that, on the occasion when she called, she complained of a little swelling on her neck. This witness further testified under examination by the trial court that the defendant-appellee made no examination of her, State of Case, page 12. That after she asked appellee whether her treatments would help her and being informed that they would she was put through the same routine as the other witness,

viz., electric cabinet bath, shower and electric vibrator massage.

I do not think it is necessary to set forth the testimony of the other witnesses produced by the appellant, their testimony is practically alike. They all testified that when they came to this place where the alleged treatments were given them, they complained of something and although the nature of their complaints were different, all were put through the same routine, namely, electric cabinet bath, shower, massage, vibrator, &c. Nowhere in the testimony of the witnesses produced by the appellant is there any evidence or suggestion that appellee held herself out as being able to diagnose, treat or prescribe for any of the illnesses complained of or that she offered by any means or methods to diagnose and treat such complaints.

ELIZABETH DUSSINGER, defendant-appellee, testified that, she is a trained nurse; that she is employed as a masseuse to give cabinet baths, massages and sun ray treatments to ladies, State of Case, page 21, and that the witnesses who testified for appellant called at the place of business where appellee was employed and were given practically the same treatment and put through the same routine, viz., electric cabinet bath, shower, massage, &c., State of Case, page 21.

Defendant-appellee further testified that she at no time diagnosed or prescribed for any of the ailments complained of by these witnesses, State of Case, page 22.

The true character of the work performed by the defendant-appellee was clearly brought out by the trial court in the examination of the defendant-appellee from which appellee takes the

liberty of quoting the following: State of Case, page 25

"By the Court.

Q What is this place? A It is a gymnasium, cabinet bath, and massage.

Q Who conducts it? A Bruno Reysik.

Q Under what name? It has no name?

A He just signs his own name.

Q Then it is under his own name? A Yes.

Q You have said several times in connection with this bath, washing and massage, the use of a sun ray lamp. What is this sun ray lamp? A It is a sun lamp that is applied for about two minutes' application after a treatment.

Q After what treatment? A After a massage.

Q What is the purpose of this sun ray? A It is supposed to have a stimulating effect on the circulation.

Q Stimulation by the application of warmth? A It is given for sun burn, but we don't give it for that length of time.

Q Is it by application of warmth? A Yes.

Q Now, these electric cabinet baths, what are they put in there for? A Sweating."

It is respectfully submitted that the foregoing testimony demonstrates beyond doubt that what the witnesses who testified for the appellant received from the appellee was nothing more than a professional massage. It is significant that although each witness complained of a different ailment, they were all put through the same routine regardless of and without any reference to the ailment, pain or trouble complained of.

The Legislature by this enactment intended to prohibit the treatment of disease without a license and to hold that a massage given without reference to any particular ailment, disease, pain or

trouble complained of and where the person giving the same does not in any way hold himself out as being able to diagnose or treat diseases, is a violation of the act, is to read something into the act which the Legislature never intended.

An examination of the cases cited in appellant's brief will show that in none of those cases, did the Court go to the extent which appellant contends and that the cases cited in appellant's brief contained elements which are not present in the case at bar.

In the case of *State Board v. Hirsch*, 140 Atlantic 312, the testimony was that the defendant had a sign with "Dr. Frank Hirsch" on his door, that there were office hours listed on his door; that his office was a treating room and that he had a lot of literature describing various diseases and recommending treatments.

In the case of *State Board v. Livesy*, 140 Atlantic 444, the defendant not only gave electrical treatments for various ailments, but also prescribed diets and gave salts to be taken inwardly.

In the case of *State Board v. De Young*, 140 Atlantic 676, the testimony was that the defendant had a sign displayed in his window reading "Electric Treatments;" that he also had a sign reading "Doctor De Young" in large letters; that in smaller letters there appeared the words "Osteopathic Physician And Surgeon." There was also a sign "Dr. De Young" and other signs. In this case the Court also found that, the defendant used a fluroscope, that he diagnosed the witness' heart as being overworked, her liver enlarged and stomach dilated. In that case, the defendant also took the witness's blood

pressure, asked for a specimen of her urine and afterwards reported the results. Certainly, none of these elements is present in the case under consideration.

In the case of *State Board of Medical Examiners v. Johnson*, reported in 140 Atlantic 591, the testimony shows that the prosecutor had signs on his door reading "Leroy Johnson, D. C. and Chiropractor." The testimony also showed that the witness was examined by the defendant and that he diagnosed her condition as arthritis and stomach trouble, that he then told her to disrobe and that he used current for the purpose of treatment. In this case the Court found and it seems to us properly that, the prosecutor pretended to diagnose physical ailments and that he gave treatments therefor.

In the case of *State Board v. Blechschmidt*, reported in 142 Atlantic 549, the defendant, while he was a licensed chiropractor, used a concussor and a light to shine in the eyes which was connected with electric current.

It is respectfully submitted that none of the elements which were found to exist in the cases hereinbefore referred to is present in the case under consideration. The signs represented the place to be what it actually was—a gymnasium, and if the work which the defendant-appellee performed constitutes a violation of the act, then indeed every masseuse and, nay, even every barber is guilty of a violation of the act, for it is a matter of common knowledge that massages such as testified to in the case at bar are given in barber shops, and this is a fact of which the Court may well take judicial notice.

II.

The Trial Court having found as a fact that appellee did not give electrical treatments prohibited by the act and there being testimony to sustain the Trial Court, such finding should not be disturbed on appeal.

It is elementary that where there is any evidence to sustain the findings of the trial court, they will not be disturbed on appeal. (*Breitbart v. Lurich*, 120 Atlantic 11.)

In the case of *State Board v. Livesy*, 140 Atlantic 444, the Supreme Court, although reversing the judgment of the trial court upon another ground, nevertheless, makes this statement,

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

In the case under consideration, the question as to whether the work performed by the defendant-appellee constituted a violation of the act was a disputed one and the Court having found from the evidence that no treatments, as such, were given by the defendant-appellee such findings being amply supported by the evidence are conclusive upon appeal.

City of Bridgeton v. Fidelity and Deposit Company of Maryland, 88 N. J. L. 645, 96 Atlantic 918;

Duff v. Prudential Insurance Company of America, 90 N. J. L. 646, 101 Atlantic 371;

Shaw v. Texas Company, 91 N. J. L. 716, 103 Atlantic 380;

Penn v. Radio Distributing Corporation, 148 Atlantic 648.

For the foregoing reasons, it is respectfully submitted that the judgment of the Supreme Court should in all respects be affirmed.

ROBERT SILBERMAN,
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SEYMOUR J. SOLOMON,
Of Counsel with Defendant-Appellee.

