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AFFIDAVIT.

(Filed December 31, 1929.)

NEW JERSEY SUPREME COURT.

ARTHUR CARL HEINTZE, *Prosecutor,* v. THE NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS, *Respondent.*	On Certiorari. Affidavit.

STATE OF NEW JERSEY, } *ss.*
COUNTY OF CAMDEN, }

S. RUSLING LEAP, of full age being duly sworn on his oath, deposes and says:

I am an attorney and counsellor at law of the State of New Jersey, and attorney and counsel for Arthur Carl Heintze, in the proceedings instituted by the New Jersey State Board of Medical Examiners against him in the Camden City District Court for violation of the provisions 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 the provisions thereof," approved May twenty-second, one thousand eight hundred and ninety-four, as said Section 10

was amended by Act approved April eighth, one thousand nine hundred twenty-one.

The case was tried on the eighth day of November, 1928, before Frank Neutze, Esquire, Judge of the Camden City District Court, and after taking testimony, the matter was adjourned until December 6th, 1929, on which day the defendant, Arthur Carl Heintze, was found guilty as charged.

The warrant charged that Arthur Carl Heintze, in violation of the 10th 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," did commence and continue the practice of medicine and surgery within the meaning of Section 8 of said Act as said section was amended by Act approved April twelfth, one thousand nine 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 10 of said Act and against the form of said statute.

The contention of the prosecutor in the court below was, and is here, that the proceedings against the prosecutor were not in proper form in that the prosecutor was charged generally during the months of January, February, March, April, May, June, July, August, September, October, November and December, nineteen hundred and twenty-eight, and during the months of January, February and March, nineteen hundred and twenty-nine, with practicing medicine in violation of Section 10 of the New Jersey Act, and in that no specific offense was charged, and further that the proceedings violate the rights secured to him by the 14th Amendment to the Con-

stitution of the United States, in that: The prosecutor is deprived of liberty and property without due process of law, and in that the enforcement of the aforesaid Act against prosecutor results in denying to him the equal protection of the law within the meaning of the Fourteenth Amendment to the Constitution of the United States; that the proceedings against prosecutor are in violation of the rights secured to him by the Constitution of the State of New Jersey, in that: he is deprived of the right of enjoying and defending liberty and acquiring, possessing and protecting property and of pursuing and obtaining safety and welfare within the meaning of Section 1 of Article 1 of the Constitution of New Jersey; and in that: he is deprived of the right of a trial by jury secured to him under Section 8 of Article 1 of the Constitution of the State of New Jersey and also under Section 7 of Article 1 of the Constitution of the State of New Jersey; and further that the Act under which the complaint is filed is not a reasonable exercise of the police power, in that it fails to recognize the art of healing and treatment known as naturopathy, and fails to provide for the licensing of practitioners in that particular branch of healing; in that one of the charges made was that the prosecutor was, in his practice, using the word or designation "Doctor" before his name, while he, in fact, held a certificate from the State Board of Chiropractors, which was introduced in evidence, and wherein the prosecutor was designated as Dr. Arthur C. Heintze; and further that the penalty set forth in the Act under which these proceedings were instituted provides for a penalty for the first offense of $200.00 or one hundred days in the county jail, and for a second offense, a penalty of $500.00, or an imprisonment not exceeding two hundred days; and the Act further provides that

all proceedings for violation thereof shall be tried in a summary manner without a jury, and the penalty so imposed is an excess of the power of the Legislature for cases tried in a summary manner, and is violative of Sections 7 and 8 of Article 1, of the Constitution in the State of New Jersey, and further, that the Act provides that a portion of the penalty shall be paid to any incorporated medical society procuring the evidence upon which the defendant was convicted, and that said judgment is in divers other respects illegal, unjust and oppressive and should be set aside and for nothing holden.

Testimony was taken before the Camden City District Court upon the trial, which was reduced to typewriting and an accurate transcript of which is herewith presented, together with a copy of the warrant which issued.

I respectfully apply for a writ of certiorari to review the judgment of conviction entered in said Camden City District Court.

S. Rusling Leap.

Sworn and subscribed to before me this 31st day of December, 1929.

Albert C. Hughes,
M. C. C. of N. J.

WRIT OF CERTIORARI.

(Filed Jan. 2, 1929.)

NEW JERSEY, *ss.*

(Seal) The State of New Jersey to Edwin Hillman, Clerk of the Camden City District Court, Greeting: We, being willing, for certain reasons to be certified of and concerning a certain accusation, in writing, and the proceedings at the trial and judgment of conviction in said Camden City District Court against Arthur Carl Heintze, for 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 the provisions thereof," approved May twenty-second, one thousand eight hundred ninety-four as said Section 10 was amended by Act approved April eighth, one thousand nine hundred twenty-one which said proceedings were brought against the said Arthur Carl Heintze by the New Jersey State Board of Medical Examiners, as is said, do command you and each of you that the said accusation, in writing, proceedings at the trial, including the testimony taken, judgment of conviction, with all things touching and concerning the same, together with this writ, you distinctly and openly send, under your hand and seal, to our Justices of our Supreme Court of Judicature, at Trenton, on the 20th day of January next, that our Justices may cause thereon to be done what of right, and according to the laws of this State, should be done.

Witness, Honorable William S. Gummere, Chief Justice of our Supreme Court of Judicature, at Trenton, this 31st day of December, 1929.

Fred L. Bloodgood,
Clerk.

S. Rusling Leap,
Attorney for Prosecutor.

Let the above writ be sealed and issued.

J. L. Bodine,
J. S. C.

State of New Jersey, }
County of Camden, } *ss.*

M. H. Beebe, being duly sworn according to law, upon his oath, deposes and says that he served the within writ of certiorari upon Edwin Hillman, clerk of the Camden City District Court, personally, at the court room in the Court House, Camden, N. J., on January 2, 1930.

M. B. Beebe.

Sworn and subscribed before me this 17th day of January, 1930.

Bertha C. Hack,
Notary Public of New Jersey.
Commission expires Dec. 15, 1932.

RETURN TO WRIT.

To the Honorable Justices of the Supreme Court of Judicature of New Jersey:

In obedience to the command of the within writ, I, Edwin Hillman, clerk of the Camden City District Court, do send under my seal to you, the Honorable Justices of the Supreme Court of Judicature of New Jersey, the accusations in writing, bond and the proceedings at the trial, including the testimony taken, and judgment of conviction, with all things touching and concerning the same, in the matter pending before said District Court of the City of Camden, wherein the New Jersey State Board of Medical Examiners was plaintiff and the said Arthur Carl Heintze was defendant, as fully and as entirely as they remain before me, as appears in the schedule hereto annexed, as I am commanded.

In witness whereof, I have hereunto set my hand and seal this 17th day of January, A. D. nineteen hundred and thirty.

EDWIN HILLMAN,
Clerk Camden City District Court.

(Seal)

45368.

State Board of Medical Examiners, v. Arthur Carl Heintze.	On Warrant. Trial and Judgment.

Attorney General for plaintiff.

S. Rusling Leap, Esq., attorney for defendant.

May 3rd, 1929. Issued warrant, returnable forthwith.

May 3rd, 1929. William L. Sauerhoff, Sergeant-at-Arms, returned warrant endorsed, defendant taken in custody and entered bail for four hundred dollars before Edwin Hillman, clerk for appearance on Wednesday May 8th, 1929, at 10 A. M.

May 3rd, 1929. Complaint filed.

May 3rd, 1929. Parties appeared ready for trial, plea of not guilty entered by defendant, motion made by defendant for dismissal of case, motion denied by the Court and execution allowed. Certificate offered in evidence marked P1, Mary Di Vito sworn for plaintiff, Elsie Dolbert sworn for plaintiff, stenographer sworn, papers offered in evidence marked in certification marked P1, 2, 3 and P4, Lena Schoof, Fransinio Wilkinson, sworn on part of plaintiff, plaintiff rests. Exhibits offered by plaintiff marked P1, 2, 3 and P4. Copy of license offered in

evidence marked D1. Harry F. Van Desaid, M. D., and Walter Seth Kapmis, sworn for defense. The Court found defendant guilty, and assessed the fine at the sum of two hundred dollars, as provided by Statute, or in lieu thereof imprisonment in the county jail for a period of thirty days.

December 6th, 1929. Wherefore it is adjudged that said plaintiff do recover of said defendant, the said sum of two hundred dollars as heretofore assessed against him or in lieu thereof, imprisonment for a term of thirty days in the county jail, as heretofore, ordered against him. Also the sum of three dollars and eighty-five cents costs of suit.

December 6th, 1929. Bail renewed.

I, Edwin Hillman, clerk of the District Court of the City of Camden do hereby certify that the foregoing is a true and correct copy of the proceedings and determination of said Court in said cause as the same appears upon the records of this office.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court this second day of January, nineteen hundred and thirty, A. D.

EDWIN HILLMAN,

(Seal) *Clerk.*

January 2nd, 1930. Writ of certiorari filed.

COMPLAINT.

(Filed May 3, 1929.)

STATE BOARD OF MEDICAL EXAMINERS OF NEW JERSEY,
Plaintiff,
v.
ARTHUR CARL HEINTZE,
Defendant.

Complaint.

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

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 January, February, March, April, May, June, July, August, September, October, November and December, nineteen hundred and twenty-eight, and during the months of January, February and March, nineteen hundred and twenty-nine, at the City of Camden, in the County of Camden and State of New Jersey, one Arthur Carl Heintze of the City of Camden, in the County of Camden 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 Arthur Carl Heintze 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.

Deponent therefore says that the said Arthur Carl Heintze 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 Arthur Carl Heintze may be apprehended and dealt with according to law.

CHARLES B. KELLEY.

Sworn and subscribed before me this 18th day of March, A. D. nineteen hundred and twenty-nine.

LILLIAN HART,
Notary Public of New Jersey.

WARRANT.

(Filed May 3, 1929.)

CAMDEN COUNTY, *ss.*

The State of New Jersey to any Constable of the County of Camden or to the (Seal) sergeant-at-arms of the District Court of the City of Camden, or to the inspector of the State Board of Medical Examiners of New Jersey.

Whereas, proof has been made before me under oath that during the months of January, February, March, April, May, June, July, August, September, October, November and December, nineteen hundred and twenty-eight, and during the months of January, February and March, nineteen hundred and twenty-nine, at the City of Camden in the County of Camden and State of New Jersey, one Arthur Carl Heintze of the City of Camden, in the County of Camden 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 Arthur Carl Heintze 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 Arthur Carl Heintze so that you have him forthwith before the District Court of the City of Camden, at the Court House in said City of Camden, in the County of Camden and State of New Jersey, to answer under 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, Frank Neutze, Esquire, Judge of the District Court of the City of Camden this third day of May, A. D. nineteen hundred and twenty-nine.

Edwin Hillman,
Clerk.

May 3, 1929.

Defendant taking into custody and entered bail for $400.00 before Edwin Hillman, clerk for appearance on Wednesday, May 8, 1929.

W. L. Sauerhoff,
Sergeant-at-Arms.

BOND.

(Filed May 3, 1929.)

Know all men by these presents that we, Arthur Carl Heintze and A. W. Walton, of the City of Camden, in the County of Camden and State of New Jersey, as principal, and A. W. Walton, of Camden in the County of Camden and State of New Jersey, as surety, are held and firmly bound unto the State Board of Medical Examiners of New Jersey in the sum of four hundred dollars, to be paid to the said State Board of Medical Examiners of New Jersey, to which payment we bind ourselves, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the third day of May, A. D. nineteen hundred and twenty-nine.

The condition of the above obligation is that whereas the above bounden Arthur Carl Heintze, has been apprehended on warrant, issued at the suit of the State Board of Medical Examiners of New Jersey, in a proceeding wherein said Board is suing to recover a penalty of two hundred dollars for violation of 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, and taken before the District Court of the City of Camden in which said proceedings were instituted, and whereas the said proceedings has been adjourned to the 8th day of May, A. D.

nineteen hundred and twenty-nine, at the Court House in the City of Camden in the County of Camden and State of New Jersey, at ten o'clock in the forenoon of said day.

Now, therefore, if the said Arthur Carl Heintze shall appear at the time and place above mentioned and thence from day to day until the case is disposed of, and then shall abide by the judgment of the said Court, then this obligation to be void, otherwise to remain in full force and effect.

DR. ARTHUR CARL HEINTZE.
A. W. WALTON.
DR. ARTHUR CARL HEINTZE.
A. W. WALTON.

Signed, sealed and delivered
in the presence of
EDWIN HILLMAN.
Bail renewed this 6th day
of December, 1929.
EDWIN HILLMAN,
Witness.

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

A. W. WALTON, being duly sworn according to law, on his oath says that he is surety on the within bond; that he is a freeholder in the County of Camden and has property therein subject to execution worth the sum of four hundred dollars, over and above all just debts and liabilities.

A. W. WALTON.

Sworn and subscribed before me this 3rd day of May, A. D. nineteen hundred and twenty-nine.

EDWIN HILLMAN,
Clerk of District Court.

TESTIMONY.

CAMDEN CITY DISTRICT COURT.

STATE BOARD OF MEDICAL EXAMINERS OF NEW JERSEY, *Plaintiff,* v. ARTHUR CARL HEINTZE, *Defendant.*		Action at Law.

November 8th, 1929.

APPEARANCES:
For the State, ROBERT PEACOCK, ESQ.
For the defendant, S. RUSLING LEAP, ESQ.

Before NEUTZE, J.

Mr. Leap: I have furnished the stenographer with a copy of these motions. I will make each one, for the purpose of having the record in shape, and I will reserve any comments or arguments until I

have completed all of them. Our purpose in this case is to prepare a record for appeal, as it is our purpose to take the case into the United States Supreme Court. Merritt Lane is associated with me ——

Mr. Peacock: In order to get the record complete, I think we had better open the case. Pardon me for interrupting.

Mr. Leap: I understood you had opened.

Mr. Peacock: I hadn't made an opening.

(Mr. Peacock opens the case for the plaintiff to the Court.)

Mr. Leap: First, we enter a denial and a plea of not guilty. It may be unusual but I desire to enter a plea of not guilty.

Mr. Peacock: I was just going to plead the defendant, so that saves me the trouble. All right.

Mr. Leap: The first motion: That the complaint or warrant do not reasonably apprise the defendant of the offenses which he is alleged to have committed; in that the complaint states that ——

The Court: Are you going to ask the Court to rule on each one separately?

Mr. Peacock: I have the suggestion, let him raise each point and I will answer each point, so we can get it before your Honor. This is a voluminous brief, your Honor, and ——

Mr. Leap: The only thought I had was, I would like to get all these things on the record in regular order, and then take up number one, number two, number three, and so on.

Mr. Peacock: All right.

Mr. Leap: I am not finished with number 1—in that the complaint states that during the months of January, February, March, April, May, June, July, August, September, October, November and December, 1928, and the months of January, February and March, 1929, at the City of Camden, he did violate Section 10, in that he did commence and continue the practice of medicine and surgery.

No. 2: That in all penal or criminal actions the particular offense or violation must be so stated as to be identified by the defendant in order that a proper defense may be prepared.

No. 3: That there is no date set forth upon which he is alleged to have committed the offenses.

No. 4: That the offense is not specifically charged.

No. 5: That it charges more than one offense in one complaint, the complaint being in the nature of a criminal proceeding, although it is, in form, a civil suit.

No. 6: There are a series of offenses charged, not a continuing offense.

No. 7: This proceeding against the defendant violates the rights secured to him by the Fourteenth Amendment of the Constitution of the United

States, in that he is deprived of his liberty and property without the due process of law, in that the prohibitory provisions of the Act on which the prosecution is based and the definition of practicing medicine and surgery is wholly arbitrary and includes within the terms "Practicing Medicine," matters which have no reasonable relation to the practice of medicine and surgery, and if construed to prohibit the conduct of the defendant, prohibits conduct on his part which has no reasonable relation to the practice of medicine and surgery, and no reasonable relation to the public health and welfare, which would permit the Legislature to prohibit such conduct on the part of the defendant without a license, with the result, that if it is enforced against him there is a taking of respondent's property and liberty within the meaning of the constitutional provisions above referred to. Further: The provisions of the Act which permits the proceedings against him, and his arrest, and his trial in a summary manner, is arbitrary, and not due process of law. Further: The enforcement of the Act against the respondent results in denying him the equal protection of the law within the meaning of the Fourteenth Amendment of the Constitution of the United States, in that the prohibitory sections of the said Act, and the definition of practicing medicine or surgery is arbitrary, and the acts performed by the respondent do not bear such a relation to the public health and welfare as to permit the Legislature to require a license; and said acts are of the same type and description as are permitted to be performed by others without a license, and that there is, therefore, a denial of the equal protection of the law. Further: The exceptions in said Act, under which those licensed under other Acts may perform acts prohibited to the respondent,

are arbitrary, and the Act does not have a general application with respect to matters properly coming within the same class as the acts of the respondent, and there is, therefore, a denial of the equal protection of the law. Further: The Act permits proceeding against the respondent in a summary way, whereas in other cases of similar nature, those accused are entitled to be proceeded against in the ordinary way, either by civil suit or by complaint, in each of which instances the respondents are entitled to a trial by jury, and the segregation of those charged with violation of the Medical Act is unreasonable and arbitrary and a denial of the equal protection of the law. Further: That the proceedings against the respondent are in violation of the rights secured to him by the Constitution of the State of New Jersey, in that he is deprived of the right of enjoying and defending liberty, and acquiring, possessing and obtaining safety and welfare within the meaning of Section 1 of Article 1 of the Constitution of the State of New Jersey, for the reason set forth in the two preceding reasons. Further: He is deprived of the right of a trial by jury secured to him under Section 8 of Article 1 of the Constitution of the State of New Jersey, and also under Section 7 of Article 1 of the Constitution of New Jersey.

No. 8: The Act under which the complaint is filed being "An Act to regulate the practice of medicine and surgery, to license physicians and surgeons, and to punish persons violating the provisions thereof," Pamphlet Laws 1894, page 454, and the Acts supplemental to and amendatory thereof, are unconstitutional, in that said Acts and supplements and amendments protect those practicing the profession of medicine, and said laws are not framed for the

purpose of protecting the public and is therefore not a reasonable exercise of the police power.

No. 9: The Medical Act is unconstitutional and is an unwarranted exercise of the police power, in that it fails to recognize the art of healing and treatment known as Naturopathy, and in that it fails to provide for the licensing of practitioners in that particular branch of healing.

No. 10: The complaint filed in this matter fails to identify the particular offense committed and by reason thereof, this defendant is unable to determine whether or not the acts charged are such acts as are permitted by the license which he now holds, and is unable to prepare and present a defense.

No. 11: The Act regulating the practice of medicine, together with its supplements and amendments thereto, are unconstitutional, in that there is an attempt to delegate to the State Board of Medical Examiners the right to determine what system or branches of medicine or surgery or methods of treatment of disease may be licensed.

No. 12: The Act is unconstitutional, in that section 10 of the Act provides that the trial shall be held in a summary manner before the Court without a jury, and the penalty provided therein for the first offense is two hundred ($200.00) dollars, or for the refusal or neglect to pay the judgment, said Act provides that the defendant shall be committed to the county jail for a period not exceeding one hundred days for the first offense, and providing in a case of a second offense, for a penalty of five hundred ($500.00) dollars, or for the neglect or failure

to pay the judgment, for imprisonment not exceeding two hundred days.

No. 13: The penalty of imprisonment imposed for failure to pay the judgment is in excess of the power of the legislature for cases tried without a jury, and is violative of the seventh and eighth sections of Article 1 of the Constitution of the State of New Jersey. The words "of the Constitution" have been omitted there.

No. 14: Section 10, as amended by Chapter 221, Pamphlet Laws 1921, is unconstitutional, in that it provides that any penalty recovered for any violation of this Act shall be paid to the said Board of Medical Examiners, who shall pay one-half thereof to any incorporated medical society procuring the evidence upon which the defendant was convicted; and provides that the other half of the moneys recovered under penalties shall be applied by the said Board for the same purposes as other funds of the Board collected in accordance with the provisions of this Act; and Section 11 of Pamphlet Laws 1894, at page 459, or Section 38, page 333, 1910, Compiled Statutes, provides "That the expenses of said Board and of the examinations shall be paid from the license fees above provided for, and if any surplus remain, the same may be distributed among the members of the said Board as a compensation for their services as members, but otherwise they shall receive no compensation whatever." And Chapter 49, Pamphlet Laws 1921, at page 81, which amends paragraph 30, Compiled Statutes 1910, at page 3329, provides that "each member of the State Board of Medical Examiners shall receive the sum of two hundred fifty ($250.00) dollars for each regular ex-

amination so held (by said Board),'' the entire penalty clause of the Medical Act being for the direct personal benefit of the members of the Board. For the further reason that by the provisions of Section 10, as above, the penalties recovered are for the personal benefit of the members of the Board, the action is in the nature of an action for debt, and the State of New Jersey receiving no part of the fines, is violative of Section 17 of Article 1 of the Constitution of New Jersey, as amended, which provides that no person shall be imprisoned for a debt in any action, or on any judgment founded on contract, unless in case of fraud.

No. 15: The proceeding in question has been determined by the Supreme Court in the case of State Board vs. G-i-e-d-r-o-y-c, 91 Law, page 61, and State Board vs. Curtis, 94 Law, page 324, as being civil suits, and Section 10 of the Act provides that the Court shall proceed in a summary manner without a jury to hear testimony and to determine and give judgment in the matter and has provided for a penalty of two hundred ($200.00) dollars for the first offense and five hundred ($500.00) dollars for the second offense and each subsequent offense; and provided for a failure to pay the judgment on the first offense, that the defendant may be committed to the county jail for a period not exceeding one hundred days and for a failure to pay the penalty of five hundred dollars ($500.00) for a second or other offenses, that the Court shall commit him to the jail for any number of days not exceeding two hundred days.

No. 16: The above Act is in direct violation of Section 7, Article I, of the New Jersey Constitution,

as amended, which section provides "The right of a trial by jury shall remain inviolate; but the Legislature may authorize the trial of civil suits, when the matter in dispute does not exceed fifty ($50.00) dollars, by a jury of six men."

No. 17: The Act is unconstitutional and is in excess of the police power, in that all branches of practice must be comprehended and included, and provision must be made to include all recognized branches of practice.

No. 18: Paragraph 9, as amended by Chapter 221, Pamphlet Laws 1921, contains an exemption for any person in the ministration or treatment of, the sick or suffering, by prayer or spiritual means, whether gratuitously or for compensation, and without the use of any drug or material remedy. Such discrimination is a violation of the Fourteenth Amendment to the Constitution of the United States, in that the law discriminated between citizens of the State and United States without a proper basis.

Those, sir, are my motions and to take up Number 1—I move all of these different motions as made, and as I stated, the purpose is to have the record in such shape that the matter can be taken into the Supreme Court of the United States, and as I said before, Merritt Lane, of Newark, is associated with me in this case. If your Honor is ready to hear the argument on Number 1, that is, the first motion ——

The Court: Mr. Leap, I have followed these reasons why the complaint should be stricken out, and it occurs to me that the Supreme Court of this State has already ruled adversely in almost all of these

reasons you set up, and I am willing to decide each one without argument, unless you see fit to press.

Mr. Leap: No, it is purely a technical proceeding. I realize a great many of these points have been covered by the Supreme Court of the State, with the exception of this one in reference to the disposition of the penalty.

Mr. Peacock: I will clear Mr. Leap's mind on that. In 1917 the State Legislature passed an Act providing that the moneys go into the State Treasury and not to the Board.

The Court: Well, Mr. Leap, as to your first motion, or Number 1 of the motions, I will deny it; I will deny Number 2; as to Number 3, I will deny that; Number 4, I will deny that; Number 5, I will deny that; likewise Number 6, that will be denied; Number 7 will be denied; Number 8 will be denied; Number 9 will be denied; Number 10 will be denied; Number 11 will be denied; Number 12 will be denied; Number 13 will be denied; Number 14 will be denied; Number 15 will be denied; Number 15 will be denied; Number 16 will be denied; Number 17 will be denied, and Number 18 will be denied.

Mr. Leap: All right.

The Court: And you may have an exception in each case.

Mr. Leap: I ask an exception to each motion in each case.

(Exception to ruling o. k.)

FRANK NEUTZE,
J.

The Court: You may have an exception.

(Exceptions noted for the defendant.)

Mr. Leap: Now, I wish to make just a formal motion, for the purpose of the record. I appreciate the requirement of the District Court Act of the notice of two days, but I also appreciate the fact that there has been given to the Court power to grant this motion, regardless of the omission to give two days' notice, that is, for a trial by jury. In making that motion, I appreciate that the Medical Act has prohibited a trial by jury. I am just making that for the purpose of the record.

The Court: Because our Supreme Court has already ruled that you are not entitled to a trial by jury, I will deny that motion.

(Exception noted for the defendant.)

Mr. Peacock: I accordance with Chapter 52, Laws of 1924, I offer in evidence a certificate of Charles B. Kelley, Secretary of the State Board of Medical Examiners of New Jersey, to the effect that Arthur Carl Heintze does not have a license to practice medicine in the State of New Jersey.

Mr. Leap: I wish to interpose an objection to that, that this is a matter of proof by the Board and not by the certification, and that the Act of the Legislature providing for the admission of a certificate in place of the testimony of the Secretary is unconstitutional and is illegal.

The Court: I will overrule your objection.

Mr. Leap: All right; an exception, please.

The Court: An exception will be noted.

(Exception noted for the defendant.)

Mr. Leap: I wish further to make the added objection to that certificate. The purpose of this objection is in addition, as I stated before; that the Secretary is necessary, the testimony of the Secretary as to the license held by Heintze is necessary, in order to show that he does not come within the exceptions under Section 9 of the Act. His testimony should have been presented instead of the certificate, as Heintze at the present time is the holder of two certificates which are recognized as exceptions under the State Medical Board, that of optometrist and that of chiropractor.

The Court: Your objection is overruled.

(Exception noted for the defendant.)

(Said certificate is marked Exhibit P1.)

Mary De Vita, sworn.

(The witness was then withdrawn.)

ELSIE DAUBERT, sworn.

Mr. Peacock: Mr. Leap, do you admit that the City of Camden, as set forth in the complaint, is in the County of Camden and State of New Jersey?

Mr. Leap: We admit nothing. I am sorry, but my instructions from headquarters will not permit me to.

Mr. Peacock: I will call the Sergeant-at-Arms to prove it.

The Court: It seems to me, since we are going to be so technical, that I ought to designate Mr. Kingdon as the stenographer at this time for the purpose of this proceeding. It is usual, where you have a stenographer in the District Court, for the Court to designate some person as the stenographer and to say that the Court believes him to be capable, and I will designate Mr. Kingdon.

(Joseph C. Kingdon, 2nd, sworn as stenographer.)

By Mr. Peacock:

Q. Mrs. Daubert, you are employed by the Medical Board of the State of New Jersey?
A. I am.

Mr. Leap: What is this lady's name?

Mr. Peacock: Elsie Daubert.

Q. And do you know the defendant here?

A. I do.

Q. Arthur Carl Heintze; and where is his residense in the City of Camden?

A. 561 Benson Street, Camden.

Q. On February 1st, 1929, were you at his place of business?

A. I was.

Q. And what is the description of the premises where you visited?

A. It is a private residence.

Q. And whom did you see there?

A. I saw Dr. Heintze and his wife and a girl in attendance.

Q. And what is the description of the interior of the house?

A. As you go in, to the left of the front door there is a waiting room, and as you go on back, toward the back of the house, you go through a small door and there are dressing rooms on either side, and as you go on back, there are treating rooms. There are twelve of these treating rooms.

Q. Did you see this defendant there the day you visited there on February 1st, 1929?

A. I did.

Q. Any signs in the front of his property?

A. Yes, there was one in the window, a white sign with black letters, said "Dr. A. C. Heintze"

Q. Did you make any note of it at the time?

A. Yes, I did.

Q. Have you your notes with you?

A. Yes.

Q. Do you need them to refresh your memory?

A. Yes.

Q. Will you refer to your notes and tell us what sign was in the window?

Mr. Leap: I object, unless it is shown that those notes were such as might have been made at that time, because I have run into so many of these detectives that after they get home or after they have talked with the head of the department, they will make up these memorandums from suggestion, and before permitting the witness to testify, I would like, if possible, to take these notes and see them.

Mr. Peacock: I object to him inspecting State property as evidence.

The Court: You may.

Mr. Leap: Then I object to the use of the property.

Mr. Peacock: That is State evidence.

The Court: She said she made those notations at the time. Now, the usual practice is to examine the witness to ascertain whether or not they were made about that time. I will allow cross-examination, and you may inspect the notes that she made.

Mr. Leap: All right.

The Court: As to your objection, Mr. Peacock, I will overrule it.

Mr. Leap: May I look at the paper, please?

Mr. Peacock: I object to counsel reading them.

Mr. Leap: I am not reading them.

By Mr. Leap:

Q. What day did you say you were at Heintze's office?
A. The first, the fifth and the eighth of February, 1929.
Q. The first ——
A. The fifth and the eighth.
Q. Fifth and eighth of February?
A. 1929.
Q. What days of the week were they?

Mr. Peacock: I object to that; that is not cross-examination of the point at issue.

Mr. Leap: It is; it is for the sole purpose ——

The Court: The objection is sustained.

Mr. Leap: An exception, please.

The Court: Yes, an exception will be noted. The only question now is whether or not she made those notes at the time she said she made the visit.

(Exception noted for the defendant.)

Q. Where is the sheet that you made out on February 1st?
A. Right here.
Q. This one, or the two?
A. There are two fastened together.
Q. Did you have that sheet with you in the doctor's office?
A. I did.
Q. Did you write it out in his office?

A. I did not.

Q. How long did you stay at his place?

A. I was there two hours or more; I just didn't have a watch and I didn't just time it, but I was there quite a while. I went in—I wouldn't say it was exactly one, but it was around one o'clock, and I was in there ——

Q. That is, on February 1st?

A. Yes; most of the afternoon.

Q. You went there at one o'clock?

A. Yes.

Q. You stayed there two hours, you say?

A. Two hours or more, I would say.

Q. Now, you said that you did not make out that paper while you were in the office?

A. Not in the office, no.

Q. You went there at two o'clock—or one o'clock, and you left there at three, is that it?

A. I wouldn't say the exact time that I left there, but I was there two hours or more.

Q. All right, say 3:15; where did you go right after leaving that office?

A. I went directly from the doctor's office to the Hotel Whitman.

Q. The Hotel Walt Whitman?

A. Yes.

Q. Did you go any place at all between the two, stop anywhere?

A. No, I did not, I went directly to there, and upstairs at the writing desk, I sat down and made this out.

Q. Then you made the report about a half an hour after you were in his office, is that it?

A. I should say the time it took me to walk from the doctor's office to the Hotel Whitman.

Q. So you didn't make it in his office?

A. I didn't make it in his office, no.

Q. And you didn't make it as he made the statements to you?

Mr. Peacock: There is no question concerning statements. The only question whether she can refresh her memory.

The Court: Yes, I think you are right, Mr. Peacock.

Mr. Leap: Allow me an exception to that.

(Exception noted for the defendant.)

Q. You did not make these notations, then, at the time that you were in the doctor's office?
A. I didn't do any writing in the doctor's office.

Mr. Leap: I object to the papers.

The Court: Your objection is overruled, Mr. Leap.

Mr. Leap: Exception, please.

(Exception noted for the defendant.)

Mr. Leap: Now, shall I continue with all of it, or do you want to ask her about each one?

Mr. Peacock: That is all I am asking now. I object to any further cross-examination. That covers the one question I am asking.

Mr. Leap: We are just talking about February 1st now?

The Court: Yes, and your cross-examination was limited to whether or not she should use the paper to refresh her memory, and I ruled she could, under the cross-examination.

Mr. Leap: That is the one of February 1st?

The Court: Yes; she is only using that one at this time. Let us go ahead and take that up at the proper time.

By Mr. Peacock:

Q. What sign was in the doctor's office or window?

A. In the window there was a white sign with black letters, and it said, "A. C. Heintze, Neuropath, Chiropractor, Optometrist," and "Office Hours."

Q. Where was that sign?

A. That was in the window.

Q. Did that sign have the word "Doctor" on it in any place?

A. Said "Dr. A. C. Heintze."

Q. Now, was there any other sign?

A. There was a sign on the railing. It was a brass sign that said "Dr Arthur Carl Heintze, Neuropathic Physician, Licensed Chiropractor and Optometrist."

Q. Did that sign have the word "Doctor" on it?

A. Said "Dr. Arthur Carl Heintze."

Q. Who was with you at that time?

A. Mrs. DeVita.

Mr. Leap: What was that last answer?

(Answer repeated.)

Q. Now, did you get any literature in the doctor's office that day?

A. I did.

Q. Have you that with you?

A. Mrs. DeVita has that literature, but he gave me literature on the 5th that I have.

Q. We are referring to the 1st, now. Where did you see Dr. Heintze when you went in his office?

A. Back in his office. He has an office; all these rooms are curtained off.

Q. Did you complain of any physical defect that day to the doctor?

A. I did.

Q. What did you say to him?

A. I told him I had a distress in my stomach, and he told me to go in one of these dressing rooms and put on a kimono, and then I came into his room, and he told me to lie down on this table.

Q. Did he make any examination of your body?

A. He did.

Q. What did he do?

A. He pressed very hard on my stomach.

Q. Did he offer any diagnosis of your condition to you?

A. He told me my condition was such that I could take any disease of any kind at that time.

Q. Did he tell you what was the trouble with you?

A. He just said that.

Q. Now, what else did he do that day?

A. And then he took me in another room in the back and he told me to lie down on this couch, and he put a rubber pad between my shoulders and one on my stomach, and then he put an electric pad attached to an electric wire on my back and one on my stomach, and it was there fifteen or twenty minutes.

Q. Did he use this electrical instrument on you?

A. Yes.

Q. What part of your body did he use that instrument on?

A. Between my shoulders and on my stomach.

Q. For how long?

A. Fifteen or twenty minutes.

Q. Did he use it on any other part of your body?

A. Not right then.

Q. What else did he do?

A. Then Mrs Heintze came in and she asked the doctor ——

Mr Leap: I object to any testimony as to what she asked or said.

Q. It is only relating to it as an entire transaction?

A. Yes, sir.

Mr. Leap: I object to any testimony on her part.

Q. Was the doctor there at the time she made the statement?

Mr. Leap: It would be hearsay.

Q. Don't tell what Mrs. Heintze said. Proceed.

A. I was taken to another room, and she put ——

Q. Who do you mean by "she"?

A. Mrs. Heintze.

Mr. Leap: I object to any reference to what anybody else did other than the doctor. There is no one else charged in this act with the commission of anything other than Arthur Carl Heintze.

Q. Was the doctor present at that time?
A. He was in his room.

M. Leap: I take it by that answer that he was not present.

The Court: The question now is, tell what the doctor did.

Q. Tell what the doctor did. Was Mrs. Heintze working with the doctor there on you?

Mr. Leap: I object.

Q. In any of these treatments?

Mr. Leap: I object. This charge is that he is practicing medicine without a license, and no one else is charged in this complaint. We have a technical proceeding, and the testimony should be limited entirely to what he did, and nothing more.

The Court: I believe that is right.

Mr. Peacock: All right.

Q. Now, when you went into this second room, did the doctor come in there?
A. No, he did not; he took me in there first.
Q. And what did he tell you when he took you there?
A. He didn't say anything to me.
Q. Then something happened in that room?
A. Yes.
Q. Then did you leave that room?
A. Yes.

Q. Then what did you do?

A. Went into another room.

Q. And did you see the doctor there at that time?

A. No, I didn't see him in that room.

Q. What room did you see him in before you left there after being in these three treating rooms?

A. After I had all my treatments, he came out of his office, which was Room 9, and he said, "I want you to tell her about the diet, taking the diet."

Q. Who did he say that to?

A. Mrs. Heintze.

Q. In your presence?

A. Yes.

Q. All right. Did Mrs. Heintze in the doctor's presence prescribe a diet for you?

Mr. Leap: I object to any statements as to what Mrs. Heintze did or what Mrs. Heintze said.

The Court: The objection is overruled.

(Exception noted for the defendant.)

Mr. Leap: And on the further ground that Mrs. Heintze is not charged in this complaint. The entire proceeding is technical, and the complaint is only alleging that Arthur Carl Heintze did on such and such a day practice medicine.

The Court: The objection is overruled.

(Exception noted for the defendant.)

Mr. Leap: The question as asked by Mr. Peacock is eliciting information or a statement made by Mrs. Heintze, not by the doctor.

The Court: In the presence of Dr. Heintze.

Mr. Peacock: The witness testified that Dr. Heintze suggested to Mrs. Heintze that she tell her about the diet.

The Court: Now the question is, what did Mrs. Heintze say in the doctor's presence?

Mr. Leap: You have overruled my objection? 10

The Court: Yes.

(Exception noted for the defendant.)

Q. Did Mrs. Heintze say anything to you in the doctor's presence?

Mr. Leap: I wish also to make an objection to that statement or question, this last question. 20

The Court: Well, let the stenographer repeat the question, so the witness may have it, the previous question.

(Previous question repeated.)

A. Yes.

Mr. Leap: I further wish to object on the ground 30 of prescribing.

Mr. Peacock: Strike out that question, and I will ask this question.

Q. After Dr. Heintze told Mrs. Heintze to tell

you about the diet, what did Mrs. Heintze tell you about the diet, in the doctor's presence?

Mr. Leap: I wish also to interpose an objection to that, for the reasons given before, that Mrs. Heintze is not a party in interest in this procedure, and on the second ground that Arthur Carl Heintze is the only person charged in this particular complaint.

The Court: The objection is overruled.

(Exception noted for the defendant.)

Q. Answer the question.

A. She told me that I should eat only vegetables, and that I should get whole flaxseed and make a tea of it and flavor it with lemon and use no sugar in it at all.

Q. Were you in the same place on February 5th, 1929?

A. I was.

Q. Did you see Arthur Carl Heintze there that day?

A. I did.

Q. Where did you see him?

A. In his own room.

Q. Did you complain of any physical defect that day?

A. Why, the same complaint, and he said I had inflammation of the entire body.

Q. After he told you you had inflammation of the entire body, what did he do?

A. He told me—I was lying on the table at the time, the treating table. It was an adjustable table. He twisted my neck first one side and then the other,

and then he used the electric vibrator over my entire back and legs, and he told me at that time that I had inflammation of the entire body.

Q. Did he use any electric lamps on you that day?

A. Not in that room.

Q. Did you leave that room and go to any other room?

A. Yes, I did.

Q. Was Mr. Heintze there?

A. Not in the room that I went in next.

Q. That is, the second room?

A. No.

Q. When did you next see Dr. Heintze that day?

A. I didn't see him that day any more.

Q. Did he do anything else except use the electric vibrator on you, after telling you that you had inflammation of the body, that day?

A. No, he didn't.

Q. In your presence, did he direct any one to do anything to you that day?

A. He did.

Q. To whom did he give any directions to give any treatment to you?

Mr. Leap: I object.

The Court: Well, if she heard him.

Mr. Leap: I am interposing a formal objection that Heintze is the only person charged with the ——

The Court: The objection is overruled.

(Exception noted for the defendant.)

Q. To whom did he give the directions?
A. The girl in attendance.
Q. What did he tell her, in your presence, to do?

Mr. Leap: I object.

The Court: The objection is overruled.

(Exception noted for the defendant.)

A. He told the girl, he said, "Give her the sun light treatment," which was in the next room.
Q. Did you pay Dr. Heinzte for this treatment this day?
A. Why, I had paid before.

The Court: We are talking about the 5th of February.

The Witness: And he said it was five treatments for $15.00.

Q. Did you pay him on the first day you went there, February 1st?
A. I paid Mrs. Heintze.
Q. Was the doctor present when you made the payment?
A. No.

Mr. Leap: I object to that and ask it be stricken out.

Q. Did you pay the doctor on February 5th?

The Court: Yes, that will be stricken, Mr. Leap.

A. No.

Q. Did you pay any one in his presence?
A. No, he wasn't there.
Q. Who was with you in this place on February 5th?
A. Mrs. DeVita.
Q. Now, were you at his place of business on February 8th, 1929?
A. I was.
Q. And who did you see that day?
A. Dr. Heintze.
Q. Did you have any conversation with the doctor that day?
A. I did.
Q. What conversation did you have with him?
A. He told me to lie down on the table and he pressed very hard on my back and my stomach, and he hurt me very much that day.
Q. Pressed on the stomach, did you say?
A. Yes.
Q. Any other part of your body?
A. Back, and he hurt my neck very much.
Q. What else did he do?
A. He hurt my neck so much that I hollered.
Q. All right; what else did he do?
A. He told me to go in another room.
Q. Did he give you any electrical treatments that day?
A. He used the vibrator, electric vibrator.
Q. Any other electrical treatment?
A. No.
Q. Who was present when he used that on you?
A. Nobody, only Dr. Heintze.
Q. On February 1st, was Mrs. DeVita with you?
A. She came in before I was finished.
Q. What did you see the doctor do to Mary De Vita?
A. I didn't see him do anything to her.

Q. Did you see him do anything to her on February 5th?

A. No.

Q. Did you hear any conversation between the doctor and Mrs. DeVita on February 1st?

A. No.

Q. Did you hear any conversation between those two on February 5th?

A. No.

Q. Did you see him do anything to her on February 8th?

A. I didn't see him do anything, no.

Q. On these three occasions, did the doctor give you any medicine?

A. No.

Q. Did he prescribe any medicine for you?

A. Only he was present when he told Mrs. Heintze

Mr. Leap: I object.

Mr. Peacock: Not that.

Mr. Leap: I object to the word "prescribe" and I also object to the question.

The Court: There isn't anything pending, Mr. Leap; Mr. Peacock hasn't pressed it, so there is nothing to rule on.

Cross-examination.

By Mr. Leap:

Q. You knew that Dr. Heintze was a chiropractor, didn't you?

A. I saw it on the sign.
Q. You knew he was a licensed chiropractor?

Mr. Peacock: I object to it; this witness is not qualified to pass on that point.

Mr. Leap: Let us see if she isn't.

The Court: She may answer that question, if she knows.

Mr. Peacock: All right.

Q. You know State employes generally have fairly good instructions before they go to a place.

Mr. Peacock: I object to that statement, and ask it be stricken from the record.

The Court: Yes, it will be stricken.

Mr. Leap: Will you repeat the other question that was pending?

(Question repeated.)

A. I couldn't say that I knew he was a licensed chiropractor.
Q. You saw his license in the room the day you sat there?
A. No, I didn't see it in the room that day. I didn't look around; I didn't look up there.
Q. You were reading it at about half-past one on the first of February, were you not?
A. No, I wasn't.
Q. Over the fireplace?

A. No, I wasn't.
Q. Over the mantlepiece?
A. No.
Q. You were not?
A. No.
Q. You, in fact, had been advised by your immediate superior that he was a licensed chiropractor, and that you were to procure evidence of his violating other branches of the Medical Practice Act —is that not true?

Mr. Peacock: I object, unless it is laying a foundation.

The Court: What is the purpose of it?

Mr. Leap: My purpose is to show that she knew when she went to obtain these treatments that Heintze was a licensed chiropractor, and that as such a licensed chiropractor, he had a right to exhibit his name in front of that place as Dr. Arthur Carl Heintze, and also that he had a right to give adjustments and other treatments along chiropractic lines.

Mr. Peacock: The Supreme Court has said that a chiropractor or osteopath cannot use the word "doctor."

Mr. Leap: Under the original Act, no.

Mr. Peacock: Under no Act in the State of New Jersey can a chiropractor or osteopath use the word "doctor." If he does, it is a violation of the Medical Act. The Supreme Court has said so.

The Court: What have you to say to that, Mr. Leap?

Mr. Leap: I am working on another proposition. The license that Arthur Carl Heintze holds from the Board is entitled "Dr. Arthur Carl Heintze," and regardless of any subsequent Act, the title was granted by the State and the State has not by any repealing Act taken that title away from him, and until such a repealing Act is passed it cannot by later legislation supercede the title.

(After further argument.)

The Court: Mr Peacock, I am constrained to allow the examination to go on. I will overrule the objection and allow you an exception.

(Exception noted for the plaintiff.)

Mr. Leap: Will you go back and repeat the question, please?

(Question repeated.)

A. I went there to make an investigation.
Q. Will you answer the direct question, please?
A. I went there to make an investigation.
Q. Will you please answer the direct question that is asked?

The Court: Repeat the question.

(Question repeated.)

A. I don't know whether it was evidence or not.

Q. Will you please answer the question yes or no? Did you or didn't you?

Mr. Peacock: Your Honor, I submit that she cannot answer the question, because there is no testimony here that her immediate superior told her any such thing. There is no testimony to show who her immediate superior is.

The Court: I think that is true, Mr. Leap. It seems to me it is a proper answer to the question. You can frame a different question, but I think she answered the question.

Mr. Leap: I would really like to have that answered, because the woman knows it and it is very important.

The Court: I wouldn't say she knows it; she says she doesn't know. The Court cannot say she knows it.

Mr. Peacock: There is no way she can tell if he is a licensed chiropractor, unless she had the records of the New Jersey Medical Board at hand.

Mr. Leap: All right.

Q. From whom did you receive your instructions to go to Arthur Carl Heintze's office, Mrs. Wilkinson?

A. Yes.

Q. Did Mrs. Wilkinson tell you that Arthur Carl Heintze was a licensed chiropractor?

A. No, she didn't tell me that day, no.

Q. She did tell you afterwards?

A. I don't believe I asked.

Q. What did you mean by "that day"—she told you at a later day?

A. Just to go make an investigation.

Q. But she didn't at any time tell you that he was a licensed chiropractor?

A. I don't know that she did, no.

Q. All right; you said that the sign that he had out front, which you looked at on the first of February, said "Neuropath." Look at your paper and see if that is what you have down there.

A. Neuropath.

Q. As a matter of fact, it didn't say "Neuropath," did it—it said "Naturopath"?

A. It said "Naturopath" on the other sign.

Q. Now, you told him you had a distress in your stomach?

A. Yes.

Q. Did you, at that time?

A. I did, very much.

Q. Did his chiropractic treatment relieve you?

A. No, it didn't.

Q. It didn't?

A. No.

Mr. Leap: That is all.

MARY DE VITA, recalled.

By Mr. Peacock:

Q. Mrs. DeVita, you are an inspector of the State Medical Board of New Jersey?

A. I am.

Q. Do you know the defendant, Dr. Arthur Carl Heintze?

A. I do.

Q. On February 1st, 1929, were you at his place of business?

A. Yes, sir.

Q. Where is that located?

A. 561 Benson Street, Camden.

Q. And did you see Dr. Heintze there that day?

A. Yes, sir.

Q. Who went there with you?

A. Mrs. Daubert.

Q. And what character—Or give us a description of the premises that you visited.

A. It looked like a private home, three-story brick house, and there was a hall and then a reception room, with mission furniture, next to it was a few dressing rooms, next to that there were quite a few of the treating rooms, curtained off, and some with wooden partitions, one I noticed especially with wooden partitions.

Q. Were there any signs in front of this house?

A. There was two signs.

Q. Where were these signs?

A. One was on the rail, said "Dr. Arthur Carl Heintze, Naturopathic Physician and Licensed Chiropractor, Optometrist." Another was on the window near the door as you entered, "Dr. A. C. Heintze, Neuropath, Chiropractor, Optometrist."

Q. Did you see the doctor when you went in there?

A. Yes, sir.

Q. Did you complain of any physical defect to him?

A. I did.

Q. What complaint did you make to him?

A. Told him I had a pain in the right side and I got dizzy.

Q. What did he say after you made that complaint?

A. He told me first to get on a table. It was an —oh, I want to use the term—an adjustable table.

Q. I see.

A. And told me to lay down and he pressed very hard all over my abdomen, and then he said, "You have liver trouble." Then next, he took my blood pressure and he said it was 170. He said it was nothing to be alarmed about. Then he took and turned on a switch and used the vibrator on the front part of the body.

Q. Was that an electric machine he used on your body?

A. He turned on a switch and made a noise and he used that on the front of my body and back of my body, and he pressed his fingers up and down my back and twisted my neck right and left, and that was all he did in that room that day.

Q. Did he take you to any other room?

A. He told me to go into another room, and told the attendant ——

Mr. Leap: I object to what he told the attendant.

The Court: The objection is overruled.

(Exception noted for the defendant.)

Q. What did he tell the attendant in your presence to do to you?

A. He told this attendant, who called herself a nurse ——

Mr. Leap: I object to what she called herself.

The Court: Yes, the objection is sustained as to that.

Q. Never mind that.
A. He called her Annette. He said, "Put the lamp on Mrs. Forrest," and this Annette she gave

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Mr. Leap: I object to anything that Annette did.

Q. Never mind what she did. Did the doctor go in that room with you when this attendant went in?
A. No, sir.
Q. Then something happened in that room, didn't it?

Mr. Leap: I object.

Q. Never mind what happened. Something did happen?
A. Yes, sir.

Mr. Leap: I object to any statement whether anything happened or otherwise.

A. Yes, sir .

The Court: You are not going to go any further than that?

Mr. Peacock: No. In pursuance of the doctor's directions, she went into the room with an attendant.

Q. You were in that room how long?
A. Not so very long.

Q. The room you were in was in the doctor's house, was it?

A. It was next to the room where he gave me the examination.

Q. All right; did you leave that room?

A. Yes, sir, I was told to go into another room.

Q. Never mind what you were told.

Mr. Leap: I object.

The Court: Strike it out.

Q. Did you go into another room?

A. I did.

Q. Did you see the doctor again?

A. Not in that other room.

Q. What room did you see him in after that?

A. I beg your pardon. I did see him in that other room, because he came in to see if I was all right.

Q. All right; did he do anything to you in that room?

A. No, sir, not that day.

Q. Did his attendant, in his presence, do anything to you in that room?

A. No, sir, not in his presence.

Q. Did you see him any more that day?

A. No, sir.

Q. Did you pay him for these treatments?

A. When I asked him—when I was all through and I asked him how much—I did see him when I was all through the treatments, and I said, "Doctor, how much is it"? and he says, "Oh, pay her," and this Annette was there and I gave it to her.

Mr. Leap: I object to the statement.

Q. Was the doctor present when you paid Annette?

Mr. Leap: I ask it be stricken out.

The Court: Yes, it will be stricken.

A. He was, because he told me to give it to Annette, and he was there.

Mr. Leap: I object to the use of the word "Annette."

Mr. Peacock: Why?

Q. Was this lady you describe as "Annette" there when the doctor told you to pay her?
A. Yes, sir.
Q. Did you pay her, in the doctor's presence?
A. I did.
Q. How much did you pay her?
A. $3.00.
Q. Were you there at this office again on February 5th, 1929?
A. Yes, sir.
Q. Did you see Dr. Carl Heintze that day?
A. Yes, sir.
Q. Did you complain of any physical defect that day?
A. No, sir.
Q. Did you have any coversation with Dr. Heintze?
A. I did.
Q. What conversation did you have with him?
A. Doctor and this other attendant were in the hall when I came there, and he evidently was busy,

because he said to this Annette, he said, "Annette, give Mrs. DeVita the light, the sunlight," which she did, three minutes on each side of my body.

Q. What else did the doctor do to you that day? Did he make an examination of your body?

A. Yes, and then I was told to go ——

Q. Not what you were told.

A. —— into the doctor's room.

Q. All right; did you see Dr. Heintze there?

A. I did.

Q. What did he do?

A. He told me to go on this same table as I did on the first visit, and he pressed on my abdomen and told me to turn my face down, and he used his fingers up and down the spinal column and used the vibrator.

Q. Was that an electric vibrator?

A. An electric vibrator, very hard, because it made an awful noise and hurt me very much.

Q. Dr. Heintze did that?

A. Dr. Heintze did that.

Q. What else did he do?

A. That is all Dr. Heintze did that day to me.

Q. Now, did he use any lights on you that day?

A. Not Dr. Heintze.

Q. Did anybody use them in his presence?

The Court: Answer it yes or no.

A. Yes.

Q. All right; what light was used on you in his presence?

A. It was about one by two feet, copper lined, had a red light through the center and it had a screen at the bottom of that, and he lowered—Dr. Heintze himself lowered that light about eighteen

inches above my body and placed two wet metals under each breast. Then he left the room and Mrs. Heintze then entered ——

Mr. Leap: I object.

Q. Don't tell anything about that.

Mr. Leap: I ask that be stricken.

The Court: It will be stricken out.

Q. When he placed the metals under the breasts, did any electricity enter your body?

A. It did, felt very warm and like the pricking of needles, and it had something attached—it was clamped in the center of these metals and that led to a box below my feet above and the switch was to the right.

Q. How long did that electrical treatment given you that day last?

A. About fifteen minutes, because of treatments ——

Mr. Leap: I object.

Mr. Peacock: Never mind that.

The Court: It will be stricken.

Q. Did the doctor come back in that room again?

A. No, sir.

Q. Did you see the doctor again?

A. No, sir, not that day.

Q. Were you there at the doctor's place again on February 8th?

A. Yes, sir.

Q. Did you see Dr. Heintze that day?

A. Yes, sir.

Q. Did you complain of any physical defect that day?

A. No, sir.

Q. Did you have any conversation with him?

A. Yes, sir.

Q. What conersation did you have with him?

A. He asked me how I felt, and I said a little better, and he said, "That's good," and he told me to come into the room there and pressed hard down on my abdomen and told me to turn face down, and he used the vibrator that day, turned on a switch and pressed down very hard with what felt like a rubber and made a great noise. I heard him turn on the switch, and the switch was near a large machine, like, and he pressed all over my body with that.

Q. When he examined your abdomen and pressed down on the abdomen, did he say anything to you?

A No, he didn't say anything.

Q. After he gave you the electrical treatments in that room, what did you do then, or what did he do to you?

A. Well, the last thing he did was—He told me —the last thing he did, I was in Room 7, and he placed two narrow metals that had a wire clamp in the center, one in the front of my neck and one in the back of my neck, and a T-shape on my abdomen, and that was connected with small green electric wires and extended above the small wooden poles and down to a box above my feet, which had the switch on there, because I saw him turn it on, and two electric lights was there, and I was there only a short time and that is the last I saw of Dr. Heintze that day.

Q. When he placed that apparatus on you, did any electricity enter your body?

A. It was very warm and it felt like the pricking of needles.

Q. Now, will you answer my question? Did you get electricity through that in your body?

A. Yes, sir.

Q. Did you pay him anything that day?

A. I asked him how much it was again, and he said, "Oh, pay her." The other young lady was there and I paid ——

Q. Was she present when he told you to pay her?

A. Yes, sir.

Q. And he was present?

A. Yes, sir.

Q. How much did you pay her?

A. $3.00.

Mr. Peacock: Cross-examine.

The Witness: And this was given ——

Mr. Leap: There is no question pending.

Mr. Peacock: One moment, please; I omitted something.

Q. Did the doctor give you any literature that day?

A. On the first visit only, February 1st.

The Court: You were only there on the two occasions?

The Witness: Three.

The Court: That was the first, the fifth and what?

The Witness: The eighth.

The Court: You were there on the same days that the previous witness was?

The Witness: Yes, sir, your Honor.

Q. I show you a paper called "The Pathoclast," signed by "Dr. Arthur Carl Heintze." Who gave you that paper?
A. Dr. Heintze.

Mr. Peacock: I ask it be marked for identification.

The Court: What day?

Q. What day did he give it to you?
A. February 1st, my first visit.

The Court: It will be marked for identification.

(Said paper marked Exhibit P1 for identification.)

Q. I show you another paper marked "Science versus Drugs" signed by "Dr. Arthur Carl Heintze," and ask you who gave you that paper?
A. Dr. Heintze.
Q. When?
A. The same day, February 1st.

Mr. Peacock: I ask that it be marked for identification.

(Said paper marked Exhibit P2 for identification.)

Q. I show you another calendar, "Naturopathy," "Dr. Arthur Carl Heintze, Naturopathic Physician, Licensed Chiropractor and Optometrist, 561 Benson Street, Camden, New Jersey," and ask you who gave you that?

A. Dr. Heintze gave it to me the same day, February 1st.

Mr. Peacock: I ask it be marked for identification.

(Said paper marked Exhibit P3 for identification.)

Q. I show you a card, "Dr. Arthur Carl Heintze, 561 Benson Street, Camden, New Jersey," and ask you who gave you that card?

A. Dr. Heintze, the same day, February 1st.

(Said card marked Exhibit P4 for identification.)

Q. And have those four papers been in your possession ever since?

A. Yes, sir.

Q. Did he give you any other papers?

A. No, sir.

Mr. Peacock: Cross-examine.

Cross-examination.

By Mr. Leap:

Q. What is your name, Forrest or De Vita?
A. DeVita.
Q. Why did you use the name Forrest?
A. Because I thought it best; I wanted to.
Q. You are a paid investigator, paid by the Department?

Mr. Peacock: We admit that.

Q. Do you receive any portion of the fine which is imposed in a particular case?
A. Never.
Q. How much are you paid for each case that you investigate?
A. According to the number of cases.
Q. No. How much are you paid for each case that you investigate?
A. It depends on the case; it depends—we don't get paid the same for each case.
Q. From whom did you get your instructions?
A. From the inspector.
Q. Who was the inspector?
A. Mrs. Wilkinson.
Q. Did Mrs. Wilkinson tell you that Arthur Carl Heintze was a chiropractor licensed by the State?
A. No, sir.
Q. Did you, while you were in his office, see his sign, his license that was granted by the State?
A. No, sir.
Q. You didn't read it?
A. I didn't see it.
Q. You didn't see it; did you see his license as optometrist?

A. I did, outside—well, the one on the window.

Q. No, I am talking about the certificate that was in a frame.

A. No, I didn't see any certificate.

Q. You didn't look around, then, very much?

A. Well, I didn't see it; I did look around, but I didn't see that.

Q. So that the name Forrest was an assumed name?

A. It was.

Q. Was there anything wrong with you when you went there for treatment?

A. I admitted that.

Q. That there was or was not?

A. There was.

Q. There was something wrong with you?

A. There was.

Q. Mental condition or what?

A. I don't know what you would call it.

Mr. Leap: That is all.

LENA SCHAAF, sworn.

By Mr. Peacock:

Q. Your full name is what?

A. Mrs. Lena Schaaf.

Q. Where do you live?

A. 348 Maple Avenue, Audubon, New Jersey.

Q. You are not an investigator of the Medical Department, are you?

A. No.

Q. You are not paid by the Department?

A. None whatever.
Q. I see; married?
A. Yes.
Q. Have any children?
A. Yes.
Q. How many children have you?
A. One boy.
Q. And that boy's name is what?
A. Walter.
Q. How old is he?
A. Nine—he will be ten in March.
Q. January and February of this year, you visited Dr. Heintze's office?
A. I did.
Q. How many times have you visited his office?
A. Well, I think about eight times, all told.
Q. During what months?
A. I couldn't tell you.
Q. You were there in February and January of this year?
A. This year? Yes, I guess it was this year.
Q. Did you see Dr. Heintze there?
A. Yes, sir.
Q. Did he treat your son, in your presence?
A. Yes, sir.
Q. What did he do to him?
A. Well, it is hard to explain.
Q. Well, tell the Court some of the things.
A. Took the chiropractic treatments.
Q. What else did he do?
A. Put him on these tables with the electric.
Q. Used electrical instruments on him, or electric lights?
A Electric lights.
Q. On each occasion he went there?
A. Yes, sir.
Q. What else did he do to him?

A. Well, that would be about it.

Q. The first time you went there, did the doctor make an examination of your son?

A. Yes, sir.

Q. What kind of an examination?

A. I went there for his throat, he had enlarged tonsils, and I went there to have his throat examined.

Mr. Leap: I didn't hear that answer.

(Answer repeated.)

Q. What kind of an examination did he make of his throat? Tell the Court just what he did and what he said.

A. He said he had enlarged tonsils, and I really took the treatments for his general condition. He was run down, he had just had the measles, and he was run down, and I had got a certificate from school to have his tonsils out, and I don't think any mother would like to have their son's tonsils out ——

Q. Never mind. You said he made an examination and told you the child had enlarged tonsils?

A. Yes.

Q. What did he recommend doing for them?

A. Just that I wouldn't give him no potatoes and not much sugar, and give him lots of milk and different things.

Q. What else did he prescribe for the child?

A. That was all.

Q. On each of these occasions he went there, did he give him electrical treatments?

A. Yes, sir.

Q. What else did he do for him?

A. Well, that would be all.

Q. Did you pay the doctor?
A. Yes, sir.
Q. How much did you pay him?
A. I paid him—well, I paid him $10.00 at a time.

Cross-examination.

By Mr. Leap:

Q. You mean $10.00 for each visit?
A. Oh, no, no, $10.00 for four visits.
Q. Did the treatment he gave the boy reduce the tonsil condition?

Mr. Peacock: I object to it.

A. Yes.

Mr. Leap: I think that is entirely fair.

Mr. Peacock: We are not here on the question of whether he helped the boy or whether he didn't help him.

Mr. Leap: Oh, yes, that has something to do with it.

The Court: I shall allow that, Mr. Peacock. The only thing I had in mind was whether she could testify to that or not, whether or not it requires the experience of an expert. She may answer, if she knows. I don't know whether a layman can tell whether or not it did improve the condition.

Mr. Leap: The answer was yes?

(Question and answer repeated.)

Q. And as the result of that treatment, the boy was able to return to school, was he?

A. Yes, sir.

Q. And there has been no further objection on the part of the school authorities in reference to his tonsils?

A. No, sir.

Q. The tonsils were not removed?

A. No, sir.

By Mr. Peacock:

Q. When you spoke to Dr. Heintze, what did you call him?

A. Dr. Heintze.

Q. Did he make any objection to you calling him doctor?

A. No, sir.

Q. Did others call him doctor there?

A. 'Most everybody.

Mr. Peacock: That is all; the State rests. Pardon me, your Honor—before I rest I would like to offer in evidence Exhibits P1, P2, P3 and P4 that were marked for identification.

Mr. Leap: I object to their offer, on the ground that they are immaterial and irrelevant. One relates to the practice of optometry and another is a circular advertising a certain machine. There has been no testimony that that machine was used in this instance, and it is immaterial and irrelevant, with the exception possibly of the calendar, which bears Heintze's name, and his advertisement, and his card. So far as the other two circulars are concerned ——

The Court: Your objection is overruled, and you may have an exception. They will be marked.

Mr. Leap: An exception, please?

(Exception noted for the defendant.)

(Exhibit P1 for identification is offered in evidence and marked Exhibit P2, and reads as follows):

"I am pleased to announce to my patients that I have acquired the Pathoclast, which is the most highly developed electronic machine existing today. I have found it to be all that the originators claim for it. Its description follows:

THE PATHOCLAST

(Path-Disease; Clast-Breaker)

All 'electronic' methods of diagnosis are based upon the long-suspected fact that every disease gives off a characteristic type of energy, and the discovery is now confirmed, that this energy can be detected by a peculiar reflex that it has the power to cause in the human abdomen. It was also discovered that it is possible to separate the energies of different diseases from each other, and to measure the intensity of each.

Most of the 'electronic' methods of treatment in use today are based upon the discovery by the same physician, Dr. A. Abrams, that the body can be caused to cease giving off these emanations by applying a current of the same characteristics to the patient.

It appears to be a law that any agency that will cause neutralization of the disease emanations will benefit the patient.

It remained then for Dr. Wigelsworth to con-

ceive the idea that the actual disease energy, or Pathodyne, given off by the patient, could be amplified, changed in phase, and used for treatment.

This is the principle of the Pathoclast. The disease energy is picked up by a suitable collector, is tremendously amplified and changed in certain of its characteristics, and is returned to the patient in such a way that every disease condition present is neutralized at the same time, regardless of whether it has been discovered in diagnosis or not.

The Pathometric Laboratories discovered that a vial of distilled water could be caused to absorb disease vibrations given off by the patient, and slowly re-radiate them. Due to the amplification of the Pathoclast, such a vial can be charged twice as strongly as the patient, and can be used instead of the blood clot for diagnosis.

It also plays a more important part, however. It was at once realized that this charged fluid represented an exact similar for whatever conditions the patient is suffering from, and that it could be potentized, or stepped up, to any desired point. Apparatus for doing this is incorporated in the Pathoclast, and the results that have been achieved by this method have been little short of marvelous. This charged fluid has been named *Aqua Potentia,* and there seems to be little doubt that it is soon to revolutionize 'electronic' therapy.

* * *

THE PATHOMETER

(Disease-Measurer.)

A complete, high-grade diagnostic unit is incorporated in the Pathoclast, and rates used have been accurately established with pure cultures and hospital specimens. Owing to the fact that the energy is intensified before diagnosis, the Pathoclast gives

clearer reflexes than any other electronic apparatus. Through the pathometer method of diagnosis every condition, no matter how obscure, for which the rate has been discovered, can be found.

Every patient receives a treatment exactly suited to his particular condition. A wrong treatment is impossible. Every disease of every patient is neutralized with every treatment, and the vitality of every patient is raised with every treatment. The treatment is automatically correct, and the instrument can be used without a diagnosis if desired. Reductions may immediately be tested in many diseases, after each treatment, by Physical methods of Diagnosis as well as the Pathoclast. Healing Crises or Reactions, eliminating the toxins, occur regularly, until the system is cleansed.

* * *

'RUNTS, DWARFS AND SICK PLANTS AND ANIMALS RESPOND'

Experiments have been conducted by several Pathometrists, treating animals and litters that were dwarfed or runts. They became normal in size and could not be told from others in the litter after treatment. We also have reports that similar experiments are now being conducted on small plants of this character.

It is getting down to the fundamentals of life when these things can be accomplished. Humans have expressed many testimonials on unusual accomplishments in their cases. Although animals and plants respond more quickly than human beings, because their life's history has been more natural and less perverted.

* * *

'LAWS DEALING WITH NATURE'S FINER FORCES DISCOVERED.'

When plants and animals are made to grow many

times more rapidly without changing the environment, soil or nourishment, merely neutralizing the abnormal vibrations present in the soil and seed, and amplifying the normal vibrations which they contain, it proves that the laws controlling the finer forces of nature have been discovered and dealt with. The average size of the pea plants treated was seven times as tall as the average of those not treated. Grown under the same conditions, being equally exposed to the air, light and water, planted in the same soil only in separate boxes.

* * *

DR. ARTHUR CARL HEINTZE
561 Benson Street Camden, New Jersey.
Bell Phone, 5297."

(Exhibit P2 for identification is offered in evidence and marked Exhibit P3, and reads as follows):

"SCIENCE VERSUS DRUGS

There are two professions in the United States and Canada who are authorized by law to examine eyes and prescribe glasses for defective vision. One, the Optometrist, drugless, non medical; the other is the Oculist, drugs (drops) (Cycloplegics, Mydriatics), medical.

The optometrists have been legalized by every State of the United States and in Canada. The medic who decides to practice refraction is exempted from these laws.

The outstanding difference between these two professions is that the medic thinks that drops are necessary to get the correct refractive error of the eyes.

The optometrist, on the other hand, proves that the use of drugs is unnecessary, unscientific, and often dangerous and that more accurate findings are made without them.

Following are the opinions of some of the foremost Ophthalmologists of unquestionable repute and learning on this question.

By the optometrist's methods, the eyes are examined as a pair of living, functioning, seeing organs, without impairment by a drug condemned by the best ophthalmologists of the world. Many oculists have adopted the optometrist's methods. All optometrists are not equally competent, nor can it be claimed that all oculists are. We do claim that, as a class, professional optometrists in their own field, are more competent and advanced than the majority of medical refractionists.'

William George Sym, M.D., F.R.C.S.E., Ophthalmic Surgeon, Edinburgh Royal Infirmary, Lecturer on Diseases of the Eye in the University of Edinburgh, in his text book for Students and Practitioners, says, page 72:

'The argument in favor of atropine falls to the ground * * * My practice, founded upon satisfactory experience, is not to administer a mydriatic.'

Herman Snellen, M.D., Ophthalmic Surgeon, Netherland Hospital, Utrecht, Holland: 'Any mydriatic solution instilled in the conjunctival sac may produce general disturbances which sometimes assume a most alarming character and may even cause the death of the patient.'

T. Harrison Butler, M.A., M.C., M.R.C.S., etc., England, a leading authority on Ophthalmic subjects, before the Ophthalmological Society of the United Kingdom in 1922 said: 'I was encouraged to give up cycloplegics by my friend, Dr. Deveruex

Marshall, who told me that he regarded them as unnecessary * * * The amount of confusion caused by a dilated pupil where there is an error of refraction is extraordinary. I can be more accurate with a moderate-sized pupil than with a dilated one. Many children are frightened by the instillation of drops, and the cycloplegic defeats its own end.'

There is one Vital objection to a cycloplegic: one has to guess how much to allow for the drug in ordering glasses * * * In two of my hospitals I now rarely use a cycloplegic * * * In conclusion, I suggest that refraction without a cycloplegic is as accurate as that with one, if only sufficient experience and skill are at the command of the refractionist. If not, then many of the most eminent men in this country, and in others, must be making countless mistakes. I confess that they have not come my way.'

A. E. Davis, M.D., of New York, at the same convention, agreed that: 'Burden-Cooper's method gives better refraction correction than any cycloplegic' (drops).

E. A. Jond, M.D., of New York, in the 'Medical Record,' June 24, 1916, asserts: 'I find that it is not necessary to use a mydriatic in any case of refraction. One never prescribes the correction found under atropine, and homatropine does not act long enough to be of much use.'

He reinforces these staatements by referring to more than 8,000 refractions of his own which gave better results without a mydriatic than with one, and, of course, he emphasizes also the loss from business when a cycloplegic is used.

Joseph Heitger, M.D., in discussing a paper before the Ophthalmological Section of the Kentucky Medical Association, in 1928, said:

'There are some very prominent oculists in this country who rarely use a cycloplegic except in children, and yet get accurate results with comfort to their patients. One of these outstanding men is Dr. Walter Lancaster, of Boston, a man whose knowledge of physiologic optics cannot be questioned, and yet he is one oculist who gets excellent results without using a cycloplegic routine.'

The chief purpose of using the drugs is to relax the internal muscles of the eye, but atropine and such drugs over-relax it. No normal eye 'at rest,' *i. e.*, when it is not fixed on any near point, but gazing into the distance, is ever so utterly relaxed as it is under the paralyzing influence of drugs. In that condition it is abnormal.

'During all the years that medical men had a monopoly on the practice of refraction almost no advance was made in princples and methods, and most medical men are still practicing refraction by the same old stand-by methods. Since optometry has received a legal standing more progress has been made in this science than in the previous hundred years. Being specialists in optics and devoting their whole attention to that science, optometrists have developed many new and improved efficient and accurate methods of measuring vision, leaving the old dangerous drug-using practice far behind.

How, then, can the normal vision of such an eye be measured? The medical refractionist admits that the measurement he makes in the drugged eye is not the correct one, and he would not think of prescribing the correcting glasses on that measurement. So he guesses the amount of error due to the drug and subtracts it from his prescription, or makes another test after the effect of the drug is worn off and sees how much he must deduct from his prescription.'

My Greeting of the season and mailing of my calendars is delayed out of consideration of the Mail Men.

Yours truly,
DR. ARTHUR CARL HEINTZE."

(Exhibit P3 for identification was offered in evidence and marked Exhibit P4, and reads as follows):

NATUROPATHY

It is the scientific combination of the fundamental principles of different drugless healing methods into an organized system which is in accord with the universal laws of mechanics, electricity, chemistry and psychology, which govern the natural physiologic activities of the living mechanism.

Neuropathy — Electronics
Vacuum Therapy (Picture) Dietetics
Color Therapy — Sunlight Therapy

THE NATUROPATH

is the complete Drugless Physician who uses every drugless method in such a manner as to be in harmony with the nature cure principle which has a definate and distinct philosophy regarding disease processes. The Naturopath is a physiologic mechanist.

Mon., Wed. and Fri. 1 to 8 p. m. Tues. and Thurs. 1 to 5 p. m. Sat. and Sun. No office hours

DR. ARTHUR CARL HEINTZE
Naturopathic Physician
Licensed Chiropractor and Optometrist
561 Benson Street Camden, New Jersey
Bell Phone, 5297.

. . . . . .
. Calendar .
. . . . . .

(Exhibit P4 for identification is offered in evidence and marked Exhibit P5, and reads as follows):

Mon., Wed. and Fri. Tues. and Thurs. Sat. and Sun.
1 to 8 p. m. 1 to 5 p. m. No office hours

DR. ARTHUR CARL HEINTZE
Naturopathic Physician
Licensed (Eye) Chiropractor
& Optometrist
561 Benson Street Camden, New Jersey
Bell Phone, 5297.

* * *

(Reverse side of card.)

ELECTRICITY
NEUROPATHY CHIROPRACTIC
NATUROPATHY

Is the scientific combination of the fundamental principles of different drugless healing methods into an organized system which is in accord with the universal laws of mechanics, electricity, chemistry and psychology, which govern the natural physiologic activities of the living mechanism.

Vacuum Therapy Dietitics

OPTOMETRY

Is the science of measuring the visual muscular and nervous powers of the eyes and the application of glasses for the correction of any defects.

COLOR THERAPY OPTOMETRY
LIGHT THERAPY

THE STATE RESTS.

Mr. Leap: I first wish to make a motion to dismiss the proceedings, on the ground that it is now shown that he has done other than he is licensed to do under the laws of the State of New Jersey.

The Court: Your motion is denied, Mr. Leap.

(Exception noted for the defendant.)

Mr. Leap: And I wish to offer in evidence a copy of the rules and regulations governing the admission of practitioners ——

Mr. Peacock: I object to this. They do not apply to this man, or there is no testimony ——

Mr. Leap: All right. Mrs. Wilkinson, take the stand, please.

The Court: All right; as the matter stands, I will allow the objection.

THE CASE FOR THE DEFENDANT.

FRANCES WILKINSON, sworn.

By Mr. Leap:

Q. You are an employe of the State Medical Board, are you not?
A. Yes, I am.
Q. And have been employed how many years?
A. Since March, 1918.

Q. Since March, 1918. Arthur Carl Heintze is a licensed chiropractor, is he not?

Mr. Peacock: I object to it. Mrs. Wilkinson is not qualified to pass on that. The Secretary of the State Medical Board is the only one qualified to pass on it, who has charge of the records, in accordance with the Act, and that is a matter of defense, of proof by the defendant, not by this woman, who has no knowledge of it.

The Court: Mr. Peacock, it seems to me that if this lady knows, she may testify to it. This is a matter of defense, and Mr. Leap has called her as his witness. Your objection is overruled; I shall allow it.

(Exception noted for the State.)

(Question repeated.)

A. Not according to the records of the State Medical Board, he is not licensed.

Q. As a chiropractor?

A. Not according to the records of the State Medical Board.

Q. According to the records of the State Chiropractic Board, he is, is he not?

Mr. Peacock: I object to it.

The Court: Your objection is based on what ground, Mr. Peacock?

Mr. Peacock: On the ground that she has testified from the records of the State Medical Board

and she says he is not a licensed chiropractor. He is bound by that answer; she is his witness.

Mr. Leap: We are going further. The law in the State of New Jersey provided, and the statutes —the Court will take judicial notice of them—originally provided for a Chiropractic Board, and licenses were granted by the Chiropractic Board, and that Board later was abolished and merged with the State Medical Board, so that they become one, so to speak, and this lady has charge of the records, I will show by her testimony, of both Boards, and is familiar with the facts. If Mr. Peacock wants to be technical, I would ask at this time that the case be adjourned in order that we might produce Doctor—what is his name?—Kelley, who has been dodging service of process. My opinion is, I think it is very unfair upon the part of any State official, when he knows that his services are required, that he should wilfully go out of the State. Personally, I don't like it at all.

(After further argument:)

The Court: Is there a question pending?

(Question repeated.)

The Court: Well, there is nothing in the evidence that she has charge of the records. She is your witness, Mr. Leap, and I think there ought to be some testimony with respect to the records.

Q. You have the records of the old Chiropractic Board, as well as the State Medical Board, in your office, have you not?

A. No, we have not.

Q. You have a list of the certificates and licenses that were granted by the Chiropractic Board?

A. We have no official list, at all. The Board endeavored to obtain those records, but were never successful.

Q. But you have a list of the licensed chiropractors, have you not?

A. Simply a copy of a list.

Q. You are actually the official in charge of the office of the State Medical Board, are you not, in the Trenton Trust Building?

A. No, Dr. Kelley is in charge of the office.

Q. Dr. Kelley is nominally in charge, but you are actually the person in charge of that office, are you not?

A. I am his assistant.

Q. And as his assistant, you have charge and control of all the records of the State Medical Board, have you not?

A. Well, I have access to them.

Q. You have access and you actually have charge of those records, do you not?

A. Well, no, the Secretary of the Board has charge of the records.

Q. The Secretary has charge of them, but you are the person who actually has custody of those records, and you are in charge of them every day in the week—is that not true?

A. I wouldn't say that, no; I am simply the assistant in the office.

Q. But you are the active assistant in the doing of that work, are you not?

A. Well, I supervise the work.

Q. You supervise the work; and all work that has been done is done under your supervision and instruction?

A. No, not all; Dr. Kelley supervises my work.

Q. Now, have these records concerning the licenses granted by the Board of Chiropractic—that record or list is in your custody and control, is it not?

A. We have a copy of a list, but we have no official records.

Q. And Arthur Carl Heintze's name is on that list, is it not?

Mr. Peacock: I object to it.

The Court: The objection is sustained.

Mr. Leap: An exception, please? The witness has testified that there is a list that they have, although it is an unofficial list. I realize that the Department has been entirely unfair in the treatment of the chiropractors, and they ——

Mr. Peacock: I ask that that remark be stricken from the record as an improper remark.

The Court: Yes.

(After further argument:)

The Court: Mr. Leap, we are bound by the rules of evidence. This lady has testified that she has a copy of the list, and it might be an incorrect copy, on her testimony as it is. She is your witness, and we are bound by the rules of evidence. I will have to sustain the objection.

(Exception noted for the defendant.)

Mr. Leap: I will ask her now:

Q. Does the name of Arthur Carl Heintze appear on that list that you have in your possession?

Mr. Peacock: I object to it.

The Court: Yes, the objection is sustained.

(Exception noted for the defendant.)

Q. Your Board have recognized as licensed practitioners the names of all persons appearing on that unofficial list, have they not?

Mr. Peacock: Objection.

The Court: The objection is sustained.

(Exception noted for the defendant.)

Q. From whom did you receive that unofficial list?

A. From the Secretary of State.

Q. From the Secretary of State; then why do you call it unofficial?

A. Because the list I have in the office was copied from the Secretary of State's book, and whether it is a correct copy, I could not say, because I did not check it myself.

Q. You didn't copy it?

A. No.

Q. Is it under the seal of the Secretary of State?

A. No, we have no list from the Secretary of State; simply the book was sent to our office and a clerk in the office made a copy of it. Whether it is correct or not, I cannot say; I didn't check the list after it was copied.

Q. Your Department have access to the list of licensed optometrists?
A. No, they haven't.
Q. They have not?
A. No.

Mr. Leap: That is all.

No cross-examination.

(At this point, a recess for five minutes was taken.)

Mr. Leap: I would like to offer in evidence a certified copy of the license granted by the Chiropractic Board.

The Court: I guess you can mark that on the back.

(Said certificate offered in evidence and marked Exhibit D1, and reads as follows):

STATE BOARD OF CHIROPRACTIC
EXAMINERS
STATE OF NEW JERSEY
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 ARTHUR CARL HEINTZE,

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 elimination of the cause of the diseases.

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 November in the year 1920.

No. 112.

Andrew M. Englert, D. C.,
President.

James G. Reynolds, D. S.,
Secretary.

Harry C. DeBaum, D. C.,
Treasurer.

William A. Dittman, D. C.

William H. Martin, D. C.

Received in the office of the Secretary of State at Trenton, this 24th day of November, A. D. 1920, and recorded in Book 1 on page 112.

Thos. F. Martin,
Secretary of State.

Dr. Harry F. Findeison, sworn.

By Mr. Leap:

Q. Where do you live?

A. 49 North 52nd Street, Philadelphia.

Q. And what is your line of business?

A. Naturopathic physician.

Q. Have you made a study of the science of naturopathy?

A. Yes, sir.

Q. Where did you make that study?

A. In three institutions, the Washington Missionary College, Franklin University, and the American School of Naturopathy.

Q. Did you graduate from those institutions?

A. Yes.

Q. What courses are taught in those different institutions? Take your first institution—did you graduate from all three of those institutions?

A. Yes, sir.

Mr. Peacock: I object, on the ground that it is immaterial, irrelevant and incompetent in this case.

The Court: He is called as an expert, and I suppose that is to qualify him.

Mr. Leap: That is the purpose of it.

The Court: I shall allow it; the objection is overruled.

(Question repeated.)

A. Yes.

Q. Take your first institution. What subjects are taught in that institution?

A. The first institution was entirely hydrotherapy and massage, with, of course, a backing of anatomy, physiology, chemistry, biology, histology.

Q. What is hydrotherapy?

A. The treatment of disease by water.

Q. I see; now, how long was that course?

A. Two years.

Q. What was the next school from which you graduated?

A. Franklin University.

Q. Where is that located?

A. Philadelphia.

Q. What were the subjects taught in that school?

A. The subjects taught in the Franklin University were chiropractic and naturopathy.

Q. Under the heading of chiropractic, what particular subjects did you study, or what ——

A. The usual studies of anatomy, physiology, chemistry, biology, bacteriologist, toxicology, histology, urinology.

Q. Diagnosis?

A. Diagnosis.

Q. Pathology?

A. Pathology.

Q. Anything else?

A. Well, it is pretty difficult to remember everything right offhand.

Q. Now, in the course of naturopathy, what subjects did you study?

A. Similar subjects as were taught in the chiropractic school, with an elaboration in the treatment and the philosophy of naturopathy.

Q. What is naturopathy?

A. Naturopathy is a philosophy of healing, embodying within itself a complete system of therapeutics, basing its treatment of all physiological dysfunctions and abnormal conditions of the body on the natural laws governing the body and maintaining life. This system includes the correlation of part with part anatomically, physiologically, psychologically and chemically. It is the treatment of the sick by any movements, adjustments or manipulations performed by the hands, or by any instruments or appliances, and the use of any physical forces, such as air, light, water, heat, electricity, or any of their derivatives, or any other system or sys-

tems of therapeutics correlated with the above therapeutic measures, the use of non-toxic herbs and plants, applied, administered or prescribed, and minor surgery and obstetrics as a first aid and emergency measure.

Q. All of those studies were taught in the Franklin College?

A. Yes.

Q. Now ——

Mr. Peacock: May the time be stated, your Honor?

The Court: Yes, you are entitled to the time.

Mr. Leap: What was your point?

Mr. Peacock: I think there should be a time stated when those studies were taught.

Mr. Leap: All right.

Q. What courses and what times were devoted to the particular studies?

Mr. Peacock: Objected to, unless there is a time showing when these courses took place.

Q. When did your course — when did you take that course?

A. I completed that course in 1922.

Q. 1922; over what period did that course cover?

A. Two years of twelve months each.

Q. That was in addition to the first school, to which you have already testified?

A. Yes.

Q. After graduating from that school, then what school did you attend?

A. The American School of Naturopathy.

Q. Where is that located?

A. That is in New York.

Q. Where, in New York?

A. It was formerly—it is now located at 236 East 35th Street.

Q. What subjects are taught in that school?

A. The same or similar subjects.

Q. Is it a continuation school, or what was the purpose of attending that particular school?

A. The purpose of attending that school was to broaden my education and to branch out into lines that would include, to my mind, the better treatment of the conditions to which the human body falls heir.

Q. Will you kindly state particularly what subjects were taught in that school?

A. Well, it is rather difficult to state particularly the subjects taught, some may be omitted. The subjects taught were similar to those taught in all medical schools, with the exception of materia medica.

Q. You studied chemistry?

A. Yes.

Q. Pathology?

A. Yes.

Q. Biology?

A. Yes.

Q. Bacteriology?

A. Yes.

Q. Diagnosis?

A. Yes.

Q. What other subjects? Name your subjects.

A. Anatomy, chemistry, physiology, bacteriology, pathology, toxicology, symptomatology, psychology,

hydrotherapy, massage, electrotherapy — I don't know whether I left any out or not.

Q. Dietetics?

A. Oh, yes, dietetics, diagnosis, urinology. If you can refresh my memory ——

The Court: You have given them before?

The Witness: Yes, practically.

Q. When did you attend the American College of Naturopathy?

A. 1922 to 1924.

Q. 1922 to 1924; did you graduate from that institution?

A. Yes.

Q. And you have been practicing chiropractic and naturopathy ever since that time?

A. I have been practicing chiropractic since 1922, and naturopathy since 1924.

Q. Have you at any time been called before any departments of the Federal government in connection with the investigation of the different sciences or methods of treatment?

A. I have.

Q. What, when and by whom?

A. I was called by the Department of the Health Commissioners at Washington ——

Mr. Peacock: I object to this; this is certainly immaterial to this case.

The Court: Well, it helps to show his expertness, I suppose.

Mr. Peacock: Even though it does everything he says, you cannot do it in New Jersey.

Mr. Leap: That is what we are going to try to find out, why we cannot do it. That is the purpose of this suit.

The Court: Well, I have made up my mind to be liberal with the defendant, and I am going to do it. The objection is overruled.

(Exception noted for the State.)

A. Three weeks ago, I was called to Washington to testify before the Commission, the Healing Art Commission, of which Dr. Fowler is the Secretary and Treasurer. The purpose of that was to define ——

The Court: Let's shorten this.

The Witness: The purpose of that was to define the practice of naturopathy, so that a definition could be formulated and adopted by the Federal government in their effort to legalize and license the practitioners of naturopathy in the District of Columbia. A bill was passed by the last session of Congress, and subsequently signed by President Coolidge, legalizing ——

Mr. Peacock: I object to this and ask it be stricken.

The Court: Yes, that is hearsay.

The Witness: I was summoned there.

The Court: It is all hearsay.

Q. And you have been practicing naturopathy since 1924?

A. Yes.

Q. You have heard the testimony of the witness, Elsie Daubert?

A. Yes.

Q. In your opinion as a chiropractor ——

Mr. Peacock: Please don't answer this question, Doctor; it is going to be objected to.

Q. And as an expert in the subject, were the treatments alleged to have been given by Dr. Heintze other than that of chiropractic?

Mr. Peacock: Objected to; this man cannot say something that the Supreme Court of New Jersey says is wrong.

Mr. Leap: There are two theories. The Court passes on laws as they find them. The point we are making in this case is that the law is unconstitutional, and in order to lay our basis for the appeal, we are showing that there is no law today governing the practice of naturopathy, and also, the purpose of this question is to show that the acts bring Heintze within the exception of Section 9 of the Medical Act.

The Court: How does that question wind up?

(Question repeated.)

The Court: The objection is sustained.

(Exception noted for the defendant.)

Q. Mrs. Daubert testified that she went into the office of Arthur Carl Heintze and was placed on a table, and that the doctor went up and down her back with his fingers and pressed on her stomach, and also used an electric vibrator. From your experience and your studies, what particular class of treatment was Dr. Heintze giving that woman?

Mr. Peacock: Objected to. Don't answer it. It is an improper question, in the first place. Our courts have passed upon that as being a violation of the law.

The Court: The question didn't wind up as I expected it would. How did it wind up, what class of treatment was he doing?

Mr. Peacock: It is the opinion of this witness against the Supreme Court of New Jersey.

Mr. Leap: The Supreme Court doesn't know anything about the subject; it passes on a question of law, and not questions of fact.

The Court: I shall allow that question.

(Exception noted for the State.)

(Question repeated.)

A. Naturopathic treatment.

Q. Was any part of that treatment chiropractic?

A. No.

Q. The witness, Forrest or DeVita, testified that a light was used that was contained in a square canopy, and I think she characterized it "the sun-

light machine,'' and further, that plates were put between her shoulders and other plates on other parts of her body and current allowed to run through those plates. You heard the testimony of the witness Forrest or DeVita or whatever her name was?

A. Yes.

Q. In your opinion, what treatment was being given by Arthur Carl Heintze?

A. Naturopathic treatment.

Mr. Peacock: Objected to—one moment, Doctor. I object to that as an improper question. Our courts have said that a licensed chiropractor cannot use electrical treatment, and it is a violation of the Medical Act.

The Court: I shall allow it.

(Exception noted for the State.)

The Witness: Naturopathic treatment.

Q. The witness, Mary or Lena Schaaf, testified that her little boy was taken to Heintze's and that he examined the boy's throat and told her that the boy had enlarged tonsils, and you have heard her describe the treatment that Arthur Carl Heintze gave the boy. What, in your opinion, is the type of treatment given, under what branch?

Mr. Peacock: Objected to.

A. Naturopathy.

The Court: The objection is overruled and an exception noted.

(Exception noted for the State.)

Q. Naturopathy?
A. Naturopathy.
Q. Is the subject of electro-therapeutics embraced in the general subject of naturopathy?
A. Yes, sir.
Q. Is the science of chiropractic embraced at all in the subject of naturopathy?
A. The science of spinal therapy is embraced in the study of naturopathy. We differentiate between chiropractic and naturopathy.
Q. But not the full subject of chiropractic?
A. No.
Q. Is the science of neuropathy covered or embodied by the science of naturopathy?
A. Yes.

Mr. Leap: That is all.

Mr. Peacock: No questions.

(No cross-examination.)

Walter Seph Kipnis, sworn.

Mr. Peacock: Now, if your Honor please, I would like to ask just one question of the preceding witness.

The Court: All right; you may stand there.

Dr. Harry F. Findeison, recalled (for cross-examination).

By Mr. Peacock:

Q. You are not licensed to practice medicine in the State of New Jersey, are you?
A. No, sir.

Mr. Peacock: That is all.

Walter Seph Kipnis, recalled.

By Mr. Leap:

Q. You are a licensed chiropractor in the State of New Jersey?
A. Yes, sir.
Q. Are you licensed to practice any other branches?
A. Optometry.
Q. Any other branches?
A. Not in this State.
Q. Not in New Jersey; are you a graduate of a school of chiropractic?
A. Yes, sir.
Q. What college?
A. New York College of Chiropractic.
Q. When did you attend that school?
A. I would say 1915, or thereabouts.
Q. 1915?
A. Yes, sir.

Q. How long did you attend that school?

A. Two years.

Q. What subjects were taught in that school?

A. Anatomy, physiology, pathology, diagnosis, chemistry, dietetics—that is all I think of for the moment.

Q. Have you, since graduation, been admitted as a licensed chiropractor in any State other than New Jersey?

A. Yes, sir, I have been admitted to the practice in Minnesota?

Q. Any other State?

A. No.

Q. When were you licensed in Minnesota?

A. 1923.

Q. Did you, after your graduation from the New York College of Chiropractic, attend a naturopathic school in any place?

A. Yes, sir.

Q. Where?

A. New York City.

Q. When did you attend that?

A. Well, I graduated in 1919.

Q. What school?

A. American School of Naturopathy.

Q. Graduated in 1919?

A. Yes.

Q. What length or period of time did that course cover?

A. After due allowance of a year for the time spent in the chiropractic school, I put in three years. The course is a four-year course, but allowance is made for credits obtained at the chiropractic school.

Q. You graduated from that school when?

A. 1919.

Q. Are you admitted as a licensed naturopath in any State?

A. Yes, sir, Connecticut and Florida, by examination.

Q. Connecticut and Florida, by examination?

A. Yes, sir.

Q. When were you licensed in the State of Connecticut?

A. I was licensed by the Board of Health of Connecticut in January, 1929.

Q. 1929; and in Florida by what board and when?

A. By the Board of Naturopathic Examiners in 1927.

Q. Is there a Board of Naturopathic Examiners in Florida?

A. Yes, sir, and one in Connecticut, also.

Q. Is the science of naturopathy recognized as an actual science in Connecticut?

A. Yes, sir, by legislative act.

Q. Under such examination, what subjects or what branches are you allowed to practice?

A. You are permitted—under the license in Connecticut?

Q. Yes.

A. You are permitted to practice ——

Mr. Peacock: I object to what the Connecticut Act allows.

The Court: Yes, the objection is sustained.

Mr. Peacock: The Act speaks for itself.

Q. Under your license in Connecticut, what do you do and what particular branches do you practice?

Mr. Peacock: I object to that; the Connecticut

Act speaks for itself, and the Court will take judicial notice of the Acts of another State. This witness cannot construe ——

The Court: I don't know whether the Court will take judicial notice of the Acts of another State. It seems to me there is a better method of proof. The objection is sustained.

(Exception noted for the defendant.)

The Court: That applied to Connecticut, did it not?

Mr. Leap: Yes.

Q. Have you investigated the subject of what other States in the Union license naturopathy?
A. Yes, sir.
Q. What other States do?
A. There are approximately thirty-three States that license naturopathy in one form or another.
Q. By the name of naturopathy?
A. Either by the name of naturopathy or drugless healing.
Q. What States recognize it as naturopathy?
A. Offhand, I would say California, Oregon ——

Mr. Peacock: I object to this as being hearsay testimony.

Q. How do you know that?
A. Well, in my position as a secretary of a naturopathic association, I have to get those laws in my possession. I send to the Boards for those laws and obtain them.

Q. You have examined all those laws?
A. Yes, sir.
Q. And you are secretary of the ——
A. National Association.
Q. National Association of Naturopathics?
A. American Naturopathic Association.
Q. And you have had in your possession all these different laws and Acts?
A. Yes, sir.
Q. And you have examined them?
A. Yes, sir.
Q. What States—from what States have you received copies of laws recognizing the practice of naturopathy?

Mr. Peacock: Objected to; that is not the proper way to prove it.

The Court: The objection is sustained.

(Exception noted for the defendant.)

Q. Have you in your possession today the copies of those Acts of the different States?

Mr. Peacock: Objected to; that does not prove the law.

The Court: What kind of copies?

Q. Issued under the seal of the Secretary of State of each particular State?
A. No, sir; I have the copies as sent me by the Boards.

Mr. Peacock: I object to this, and ask the answer be stricken out.

The Court: The latter part will be stricken out as not responsive. The question was answered, and the latter part was not responsive.

The Witness: I am sorry.

Q. From whom did you obtain those?
A. From the Secretaries of the various Boards.

Mr. Peacock: I object to that, and ask it be stricken out. That is not the way to prove an Act of another State.

The Court: Sustained; it will be stricken.

(Exception noted for the defendant.)

Mr. Leap: We will close, if the Court will permit us to offer in evidence the copies, certified copies of the Acts from these different States, and ask for that purpose ——

The Court: You will have to have them exemplified.

Mr. Leap: We will have them exemplified, and we ask for that purpose that your Honor reserve opinion until we procure them, and that is our case.

(At this point, the further hearing of the cause was adjourned until Friday, December 6th, 1929, at ten o'clock A. M.)

December 6th, 1929.

The Court: Mr. Leap, as I recall, at the conclusion of the last hearing, you wanted to offer certain certificates, or exemplified copies, rather, of the Acts of the different States.

Mr. Peacock: Mr. Leap asked me to consent to the admission of the rules of the New Jersey State Board of Medical Examiners.

I offer to your Honor those rules duly certified.

The Court: That is, Mr. Leap offers them and you consent to their admission?

Mr. Peacock: Yes, sir.

The Court: These will be admitted, and marked as exhibits.

Mr. Leap: Also, I ask Mr. Peacock to admit that naturopaths are not recognized in the State of New Jersey.

Mr. Peacock: The Attorney General and the Medical Board will not let us make such admission. They say the acts this defendant has performed are recognized in New Jersey if the man has a permit from the State Medical Board to practice medicine, but the acts he has done in this case are a violation unless he does have a permit to practice medicine; and that there is not anything in New Jersey known as "Naturopath."

Mr. Leap: And naturopaths are not licensed under the law in the State—may I go that far, Bob?

Mr. Peacock: I cannot go that far—making an admission on something that doesn't exist.

Mr. Leap: As far as the record itself, on page 12, I had asked for exceptions to the Court's denials of my motions. The record says, "I ask an exception to each motion in each case." What I said was, "I ask an exception to each ruling in each case," and I now ask that the record be corrected.

The Court: The record will be corrected so as to preserve Mr. Leap's right of appeal.

Mr. Leap: Do you wish to note that here? This is the original record (indicating).

Mr. Peacock: That may be done any time by the Court.

(The Court corrects the record, as requested by Mr. Leap.)

Mr. Leap: I had instructed my client to obtain exemplified copies of the Acts of the States of Oregon, Connecticut, Florida—in order to offer them as an exhibit in connection with the testimony of Dr. Kipnis, one of our witnesses. Unfortunately, as the papers are turned over to me, I find they are certified and not exemplified.

Mr. Peacock: Well, I won't raise an objection on that point if your Honor admits them, but I do want to make this objection—that if the State of Oregon or of Florida or of Connecticut recognizes naturopaths, New Jersey is not bound by such statutes; and in offering those statutes he is trying

to write into the New Jersey statutes something that does not exist.

The Court: Why isn't that so, Mr. Leap? And, further than that, unless it is agreed they are admitted I cannot admit certified copies when the law demands exemplified copies.

Mr. Leap: I understand from the testimony of Kipnis that naturopaths are recognized in Florida, Oregon and Connecticut; and the Court instructed me to secure copies of the Acts—and, I admit, your Honor required them to be exemplified—in order to support the testimony that they are admitted as practitioners in those States.

Mr. Peacock: My point is—I am not raising objection to the fact that they are not exemplified—but, regarding them as if they had been exemplified, I state they are not binding on New Jersey. If Florida, Connecticut and Oregon have passed Acts recognizing naturopaths, they are not binding on New Jersey.

The Court: I sustain Mr. Peacock's objection. Exception will be noted for defendant.

Mr. Peacock: Mr. Leap tells me that is all he has to offer; and I ask, under the facts set forth in this case, that the defendant be found guilty under the evidence before your Honor.

Mr. Leap: It has not been proven before your Honor that the defendant does not come under the exceptions as set forth in the State Medical Act; and it has not been shown that he has administered

medicine or claimed to be a practitioner of medicine; and I ask that the decision of the Court be that Heintze is not guilty of practicing medicine as defined by the Act of New Jersey.

The Court: Mr. Leap, I am of the opinion that under the evidence in this case the defendant is guilty of a violation of the Act. That would seem to me to be in accordance with our decisions.

I will find him guilty; and the fine imposed is the fine fixed by statute—$200 and costs; and in the event of his failure to pay the fine he will serve a term in the county jail.

Mr. Peacock: Your Honor will designate the length of such term? The Act says "One to thirty days."

The Court: Thirty days.

Mr. Peacock: I ask the Sergeant-at-Arms to take the defendant into custody at once.

Mr. Leap: I ask for an exception to your Honor's decision.

The Court: Exception may be noted. Is he going to be surrendered today?

Mr. Peacock: He has to pay the fine today, even if he takes a writ of error.

CONVICTION.

STATE OF NEW JERSEY, }
COUNTY OF CAMDEN, } *ss.*

Be it remembered that on this sixth day of December, A. D. nineteen hundred and twenty-nine, at the City of Camden in said county, Arthur Carl Heintze, defendant, was by the District Court of the City of Camden convicted of violating 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 was amended by Act approved April eighth, one thousand nine hundred and twenty-one, in a summary proceeding at the suit of the State Board of Medical Examiners of New Jersey upon complaint made by Charles B. Kelley, and further that the witnesses in said proceeding who testified for the plaintiff were Elsie Daubert, Mary De Vita, Mrs. Lena Scharf and the witnesses who testified for the defendant were Frances Wilkinson, Dr. Harry F. Findelson, Walter Seph Kipnis.

Wherefore, the said Court doth hereby give judgment that the plaintiff recover of the defendant two hundred dollars penalty and costs and or in lieu thereof thirty days in county jail
dollars, cost of this proceeding.

FRANK F. NEUTZE,
Judge.

EXHIBIT.

STATE OF NEW JERSEY
BOARD OF MEDICAL EXAMINERS.

Office of the Secretary,
28 W. State Street,
Trenton, N. J.
May 23, 1929.

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

I do further certify that this certificate is made by me for use in the proceedings to which the State Board of Medical Examiners of New Jersey is a party plaintiff and Arthur Carl Heintze is a party defendant.

Charles B. Kelley
(SEAL) SECRETARY, STATE BOARD OF MEDICAL EXAMINERS OF NEW JERSEY.

STATE BOARD OF CHIROPRACTIC EXAMINERS

STATE OF NEW JERSEY.

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 ARTHUR C. HEINTZE

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 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 November, in the year 1920.

NUMBER 112.

WILLIAM A

Andrew M. Englert, D. C.
President.
James G. Reynolds, D. C.
Secretary.
Harry C. De Baun, D. C.
Treasurer.
William A. Dittmar, D. C.
William H. Martin, D. C.

(SEAL)

RECEIVED in the Office of the Secretary of State at Trenton, this 24th day of November, A. D. 1920, and recorded in Book 1 on page 112

Thos F. Martin,
Secretary of State.

RULES AND REGULATIONS GOVERNING LIMITED PRACTITIONERS

Adopted by the State Board of Medical Examiners of New Jersey December 22nd, 1921.

GENERAL RULES

The State Board of Medical Examiners of New Jersey, acting under Section 1, Chapter 136, P. L. 1921, has adopted the following definitions, rules and regulations governing persons desiring to practice a branch or branches of medicine and surgery or method of treatment of disease.

The Board has defined the words "system or branch or branches of medicine or surgery or methods of treatment of disease" to mean those branches of medicine or surgery which provide for a specific single therapeutic system, appliance, application, operation or treatment for the relief or cure of a wound, fracture or bodily injury, infirmity or disease, which does not involve the use of drugs.

The following groups of such limited branches have been adopted:

(1) Chiropractic, Naprapathy, Spondylo-therapy, Electro-therapy, Hydro-therapy, Mechano-therapy, Neuropathy.

(2) Suggestive Therapy, Psychotherapy, Magnetic Healing.

Certificates will be issued to those qualifying in any of the limited branches mentioned in either group.

Certificates authorizing the practice of any limited branch or branches of medicine or surgery in the State of New Jersey are issued upon proof of sworn statements in the application which is an essential part of the license.

Certificates will specify the limited branch or branches the holder may practice, authority being given to practice such limited branch or branches only as are specified.

Holders of certificates authorizing the practice of a limited branch or branches of medicine or surgery must conduct such practice under their own names or that mentioned in the certificate and shall not practice under any other name or title, either as an individual, company or concern.

Practice must be confined to the limited branch or branches specified in the certificate and recognized as such.

Certificates authorizing the practice of a limited branch or branches of Medicine or Surgery will not confer the right to use the title "Doctor", "Dr.", "M. D.", "Physician" or "Surgeon", or permit the holder to treat infectious, contagious, or venereal diseases, nor to prescribe or administer drugs, nor to perform such surgical operation as require cutting.

Infectious, contagious and venereal diseases referred to in the above paragraph are those classified as reportable to the State Dept. of Health.

Licensed practitioners of any limited branch or branches of medicine or surgery, may, on their cards, office signs, letterheads or elsewhere, use the name of the limited branch or branches of medicine or surgery specified in their certificates.

As to newspaper or circular advertising, attention is called to Section 6, Chapter 136, P. L. 1921.

Rules and regulations governing the practice of the appropriate limited branch or branches of medicine or surgery will be furnished the holder of each certificate.

QUALIFICATIONS

Those who make application to practice any limited branch or branches of medicine or surgery under Group 1 or 2, must,

(a) Submit documentary evidence of preliminary education received prior to entering upon the study of a limited branch or branches of medicine or surgery equal to that required for completion of the four-year course in a first grade high school of this State, to be passed upon by the Commissioner of Education of the State of New Jersey, in accordance with Section 2, Chapter 136, P. L. 1921.

(b) Submit documentary evidence of satisfactory completion of a RESIDENCE course at a school teaching the following: medical and surgical diagnosis, anatomy, physiology, chemistry, histology, pathology, bacteriology, hygiene and medical jurisprudence, and such other subjects appropriate to the limited branch of medicine and surgery, certificate to practice which is applied for, which course must

cover a period of at least twenty-eight months, four courses of seven months each in four different calendar years.

(c) Pass a licensing examination conducted by the State Board of Medical Examiners of New Jersey, after having met the requirements of (a) and (b), in medical and surgical diagnosis, anatomy, physiology, chemistry, histology, pathology, bacteriology, hygiene and medical jurisprudence, and in addition thereto a special examination in the particular system or branch of medicine or surgery, or method of treatment of disease which the applicant desires to practice, after having satisfied the Board concerning their character and moral standing.

DEFINITIONS AND SPECIAL RULES

Group No. 1

(a) CHIROPRACTIC is hereby understood to be "the detecting and adjusting by hand only, of vertebral subluxations."

(a) NAPARATHY is hereby understood to be "the detecting and correcting, by the hands only, of a diseased spinal connective tissue and ligaments."

(c) SPONDYLO-THERAPY is hereby understood to be "the examination by palpation, of the spinal column for disease and its treatment by spinal percussion traction, vibration or concussion."

(d) ELECTRO-THERAPY is hereby understood to be the use of electricity for therapeutic purposes.

(c) HYDRO-THERAPY is hereby understood to be the use of water for therapeutic purposes.

(f) MECHANO-THERAPY is hereby understood to be "The use of manual, physical or mechanical measures for therapeutic purposes."

(g) NEUROPATHY is hereby understood to be "The treatment of the nerves by manual or physical measures."

Certificates authorizing the practice of any limited branch or branches of medicine or surgery, under Group 1, authorize the holders to examine and diagnose and to assume responsibility and care of patients. Holders of certificates of a limited branch or branches of medicine or surgery, issued under Group 1, must conform their practices to the definition of the limited branch or branches of medicine or surgery specified in their certificates.

Group No. 2

(a) SUGGESTIVE-THERAPY is hereby understood to be "the treatment of disease by suggestion."

(b) PSYCHO-THERAPY is hereby understood to be "the treatment of disease by mental impressions or suggestions.

(c) MAGNETIC-HEALING is hereby understood to be "the treatment of disease by applied suggestion."

Certificates authorizing the practice of any lim-

ited branch or branches of medicine or surgery, under Group 2, authorize the holder to examine and diagnose, and to assume responsibility and care of patients. Holders of certificates of a limited branch or branches of medicine or surgery, issued under Group 2, must conform their practices to the definition of the limited branch or branches of medicine or surgery specified in their certificates.

REASONS.

NEW JERSEY SUPREME COURT.

ARTHUR CARL HEINTZE,
Prosecutor,

v.

THE NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS,
Respondent.

On Certiorari.
Reasons.

The prosecutor writes down the following reasons for a reversal of the judgment of conviction brought to this Court by the writ of certiorari herein:

1. That the complaint or warrant do not reasonably apprise the defendant of the offenses which he is alleged to have committed; in that the complaint states that during the months of January, Febru-

ary, March, April, May, June, July, August, September, October, November and December, 1928, and the months of January, February and March, 1929, at the City of Camden, he did violate Section 10, in that he did commence and continue the practice of medicine and surgery.

2. That in all penal or criminal actions the particular offense or violation must be so stated as to be identified by the defendant in order that a proper defense may be prepared.

3. That there is no date set forth upon which he is alleged to have committed the offenses.

4. That the offense is not specifically charged.

5. That it charges more than one offense in one complaint, the complaint being in the nature of a criminal proceeding, although it is, in form, a civil suit.

6. There are a series of offenses charged, not a continuing offense.

7. This proceeding against the defendant violates the rights secured to him by the Fourteenth Amendment of the Constitution of the United States;

(a) In that he is deprived of his liberty and property without due process of law, in that the prohibitory provisions of the Act on which the prosecution is based and the definition of practicing medicine and surgery is wholly arbitrary and includes within the terms "Practicing Medicine," matters which have no reasonable relation to the practice of medi-

cine and surgery, and if construed to prohibit the conduct of the defendant, prohibits conduct on his part which has no reasonable relation to the practice of medicine and surgery, and no reasonable relation to the public health and welfare, which would permit the Legislature to prohibit such conduct on the part of the defendant without a license, with the result, that if it is enforced against him there is a taking of respondent's property and liberty within the meaning of the constitutional provisions above referred to.

(b) Further, the provisions of the Act which permits the proceedings against him, and his arrest, and his trial in a summary manner, is arbitrary, and not due process of law.

(c) Further, the enforcement of the Act against the respondent results in denying him the equal protection of the law within the meaning of the Fourteenth Amendment of the Constitution of the United States, in that the prohibitory sections of the said Act, and the definition of practicing medicine or surgery is arbitrary, and the acts performed by the respondent do not bear such a relation to the public health and welfare as to permit the Legislature to require a license; and said acts are of the same type and description as are permitted to be performed by others without a license, and there is, therefore, a denial of the equal protection of the law.

(d) Further, the exceptions in said Act, under which those licensed under other Acts may perform acts prohibited to the respondent, are arbitrary, and the Act does not have a general application with re-

spect to matters properly coming within the same class as the acts of the respondent, and there is, therefore, a denial of the equal protection of the law.

(e) Further, the Act permits proceeding against the respondent in a summary way, whereas in other cases of similar nature, those accused are entitled to be proceeded against in the ordinary way, either by civil suit, or by complaint, in each of which instances the respondents are entitled to a trial by jury, and the segregation of those charged with violation of the Medical Act is unreasonable and arbitrary and a denial of the equal protection of the law.

(f) Further, that the proceedings against the respondent are in violation of the rights secured to him by the Constitution of the State of New Jersey, in that he is deprived of the right of enjoying and defending liberty, and acquiring, possessing and obtaining safety and welfare within the meaning of Section 1 of Article 1 of the Constitution of the State of New Jersey for the reason set forth in the two preceding reasons.

(g) Further, he is deprived of the right of a trial by jury secured to him under Section 8 of Article 1 of the Constitution of the State of New Jersey, and also under Section 7 of Article 1 of the Constitution of New Jersey.

8. The Act under which the complaint is filed being "An Act to regulate the practice of medicine and surgery to license physicians and surgeons, and to punish persons violating the provisions thereof,"

Pamphlet Laws, 1894, page 454, and the Acts supplemental to and amendatory thereof, are unconstitutional in that, said Acts and supplements and amendments protect those practicing the profession of medicine, and said laws are not framed for the purpose of protecting the public and is therefore not a reasonable exercise of the police power.

9. The Medical Act is unconstitutional and is an unwarranted exercise of the police power, in that, it fails to recognize the art of healing and treatment known as naturopathy, and, in that, it fails to provide for the licensing of practitioners in that particular branch of healing.

10. The complaint filed in this matter fails to identify the particular offense committed and by reason thereof this defendant is unable to determine whether or not the acts charged are such acts as are permitted by the license which he now holds, and is unable to prepare and present a defense.

11. The Act regulating the practice of medicine, together with its supplements and amendments thereto, are unconstitutional, in that, there is an attempt to delegate to the State Board of Medical Examiners the right to determine what system or branches of medicine or surgery or methods of treatment of disease may be licensed.

12. The Act is unconstitutional, in that Section 10 of the Act provides that the trial shall be held in a summary manner before the Court without a jury, and the penalty provided therein for the first offense is two hundred ($200.00) dollars, or for the refusal or neglect to pay the judgment, said Act provides

that the defendant shall be committed to the county jail for a period not exceeding one hundred days for the first offense, and providing in a case of a second offense, for a penalty of five hundred ($500.00) dollars, or for the neglect or failure to pay the judgment, for imprisonment not exceeding two hundred days.

13. The penalty of imprisonment imposed for failure to pay the judgment is in excess of the power of the Legislature for cases tried without a jury, and is violative of the Seventh and Eighth Sections of Article 1 of the Constitution of the State of New Jersey.

14. Section 10, as amended by Chapter 221, Pamphlet Laws 1921, is unconstitutional, in that, it provides that any penalty recovered for any violation of this Act shall be paid to the said Board of Medical Examiners, who shall pay one-half thereof to any incorporated medical society procuring the evidence upon which the defendant was convicted; and provides that the other half of the moneys recovered under penalties shall be applied by the said Board for the same purposes as other funds of the Board collected in accordance with the provisions of this Act; and Section 11 of Pamphlet Laws 1894, at page 459, or Section 38, page 333, 1910 Compiled Statutes, provides "That the expenses of said Board and of the examinations shall be paid from the license fees above provided for, and if any surplus remain, the same may be distributed among the members of said Board as a compensation for their services as members, but otherwise they shall receive no compensation whatever." And Chapter 49, Pamphlet Laws 1921, at page 81, which amends

paragraph 30, Compiled Statutes, 1910, page 3329, provides that each member of the State Board of Medical Examiners shall receive the sum of two hundred fifty ($250.00) dollars for each regular examination so held (by said Board). The entire penalty clause of the Medical Act being for the direct personal benefit of the members of the Board.

(a) For the further reason that by the provisions of Section 10, as above, the penalties recovered are for the personal benefit of the members of the Board, the action is in the nature of an action for debt, and the State of New Jersey receiving no part of the fines, is violative of Section 17 of Article 1 of the Constitution of New Jersey, as amended, which provides that no person shall be imprisoned for a debt in any action, or on any judgment founded on contract, unless in case of fraud.

15. The proceeding in question has been determined by the Supreme Court of New Jersey, as being civil suits, and Section 10 of the Act provides that the Court shall proceed in a summary manner without a jury to hear testimony and to determine and give judgment in the matter and has provided for a penalty of two hundred ($200.00) dollars for the first offense and five hundred ($500.00) dollars for the second offense and each subsequent offense; and provided for a failure to pay the judgment on the first offense, that the defendant may be committed to the county jail for a period not exceeding one hundred days and for a failure to pay the penalty of five hundred ($500.00) dollars for a second or other offenses, that the Court shall commit him to the jail for any number of days not exceeding two hundred days.

16. The above Act is in direct violation of Section 7, Article 1, of the New Jersey Constitution, as amended, which Section provides, "The right of a trial by jury shall remain inviolate; but the Legislature may authorize the trial of civil suits, when the matter in dispute does not exceed fifty ($50.00) dollars, by a jury of six men."

17. The Act is unconstitutional and is in excess of the police power, in that, all branches of practice must be comprehended and included, and provision must be made to include all recognized branches of practice.

18. Paragraph 9, as amended by Chapter 221, Pamphlet Laws 1921, contains an exemption for any person in the ministration or treatment of, the sick or suffering, by prayer or spiritual means, whether gratuitously or for compensation, and without the use of any drug or material remedy. Such discrimination is a violation of the Fourteenth Amendment to the Constitution of the United States, in that, the law discrimnated between citizens of the State and United States without a proper basis.

S. Rusling Leap,
Attorney for Prosecutor.

OPINION.

(Filed Jan. 21, 1931.)

NEW JERSEY SUPREME COURT.

No. 245, October Term, 1930.

ARTHUR CARL HEINTZE,
Prosecutor,
v.
THE NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS,
Respondent.

Submitted October 17, 1930: decided January 21, 1931.

On Certiorari.

Before Justices Parker, Campbell and Bodine.

For the prosecutor, S. Rusling Leap.

For the respondent, Robert Peacock.

The opinion of the Court was delivered by

PARKER, J.:

The prosecutor was convicted in a penal action in the Camden District Court of violating Section 10 of Chapter 221 of the Laws of 1921, in that he practiced medicine and surgery within the meaning

of Section 8 of said Act, without having been duly *licended* so to do.

At the outset of the trial he pleaded not guilty through his counsel, who then proceeded to a number of what he called "motions," which were presented in writing, numbered 1 to 18, inclusive, and are printed in the case. Not one of them is a motion, or calls upon the Court to take any action. One and all, they are mere propositions of law read into the record. Later in the case, the Court, after "denying" them *seriatim,* and allowing exceptions, characterized them as "reasons why the complaint should be stricken out." As it is clear on a reading of the case, that prosecutor desires to seek a court of ultimate resort in view of the conviction, we pass any technical question which may be involved.

The prosecutor is a chiropractor licensed under Chapter 4 of the Laws of 1920, which was later repealed, but saving licenses issued thereunder. He used the word "Doctor" as a title: diagnosed: and treated patients not only by manual manipulation within the Act of 1920 but by the use of vibrator, electric light, galvanic current, etc. His female assistant, in his presence, gave directions for a vegearian diet and the use of flaxseed tea. That such practice is outside of a license to use chiropractic and within the domain of medicine and surgery, seems entirely plain. Clearly, therefore, the case was in one or more respects within the statute, prescribing a penalty for practicing without a medical license. It may well be that the use of the word "Doctor" by a regularly licensed chiropractor is

permissible; we do not rest on that; but the other practices just mentioned are not.

Taking up in detail the reasons filed, numbers 1 to 6, inclusive, and 10, charge that the complaint is not sufficiently specific, and that it is multifarious. Suffice it to say that similar complaints have been held good in this court in several cases. Lowrie v. Board, 90 N. J. L. 54; State Board v. Giedroyc, 91 Id. 61; Same v. O'Neill, 6 Misc. 1075, 143 Atl. 814.

Reason 7, paragraphs a to g, and reasons 12, 13 and 16 invoke the Fourteenth Amendment to the Federal Constitution, and certain provisions of the State Constitution relating to jury trial. It is settled in this State that under he present Act, trial is to be without jury, and that this statutory provision is valid. State Board v. Buettel, 102 N. J. L. 74.

Reasons 8, 9 and 17 assert that the Act is in unreasonable exercise of the police power. Our view, and we think that of Courts generally, is to the contrary.

Reason 11 is that the Medicine and Surgery Act, and its amendments and supplements, are unconstitutional "in that there is an attempt to delegate to the State Board of Medical Examiners the right to determine what system or branches of medicine or surgery or methods of treatment of disease may be licensed."

Why this particular feature, if vicious, which is not conceded, should vitiate the entire scheme of

legislation we fail to see, and the brief fails to make it clear.

The other reasons, numbers 14, 14a, 15 and 18, are not argued.

We find no error, and the judgment and proceedings are therefore affirmed.

NOTICE AND GROUNDS OF APPEAL.

(Filed Jan. 20, 1932.)

NEW JERSEY SUPREME COURT.

ARTHUR CARL HEINTZE,
Prosecutor,
v.
THE NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS,
Respondent.

Notice and Grounds of Appeal.

To William A. Stevens, Esquire, Attorney for Respondent, or to whom it may concern:

Please take notice that the prosecutor in the above-entitled cause appeals to the Court of Errors and Appeals, in the last resort in all causes in New Jersey, from the affirmance by the Supreme Court

of New Jersey of the judgment entered in the above cause on the following grounds, to wit:

1. The Act under which the prosecutor was convicted 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 22, 1894, with the amendments thereof and supplements thereto, is unconstitutional in that it does not reasonably relate or tend to the accomplishment of the protection of the public and is hence an invalid exercise of the police power and violative of the prosecutor's rights under the Fourteenth Amendment of the United States Constitution.

2. The Medical Act aforementioned is unconstitutional in that it provides for an arbitrary delegation of legislative power resulting in an unfair discrimination against the prosecutor and violative of his rights under the Fourteenth Amendment.

3. The Medical Act, and more particularly Section Eight thereof, is unconstitutional in that it prohibits the prosecutor from performing those acts which are necessarily incident to the practice of chiropractic, to wit, diagnosis and the right to use the title "Doctor."

4. The Medical Act, and more particularly Section Eight thereof, is unconstitutional in that it is an unfair discrimination against the prosecutor in prohibiting him from using an electric lamp, electric vibrator, galvanic current, prescribing a diet,

and other modalities comprised in the science of Naturopathy, and is a violation of the prosecutor's rights under the Fourteenth Amendment.

5. The Medical Act, and more particularly Section Ten thereof, is unconstitutional in that it is contrary to the provisions of the Constitution of the State of New Jersey and also the Constitution of the United States, because it denies to the prosecutor the right to trial by jury and requires that the matter proceed in a summary manner.

ARTHUR CARL HEINTZE,
Attorney for Prosecutor.

New Jersey
Court of Errors and Appeals

ARTHUR CARL HEINTZE,
Prosecutor,

v.

THE NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS,
Respondent.

ACTION AT LAW.

ON CERTIORARI.

BRIEF OF THE RESPONDENT.

STATEMENT.

The defendant, Arthur Carl Heintze, was charged with violating Section 10 of Chapter 221, Pamphlet Laws 1921, and it was charged that he commenced and continued the practice of medicine and surgery within the meaning of Section 8 of said Act.

The case was tried before the Camden City District Court on the eighth day of November, 1929, and the Court found the defendant guilty and gave judgment that the plaintiff recover of the defendant two hundred ($200.00) dollars penalty and costs and or in lieu thereof thirty days in the County Jail.

The defendant appealed and the Supreme Court affirmed the conviction.

The defendant was licensed to practice Chiropractic in the State of New Jersey by the Chiropractic Board which was created by an Act of the Legislature in 1920.

According to the evidence presented by the witnesses for the plaintiff, the acts with which the defendant was charged are as follows: First, using the title doctor or the letters Dr. in connection with his name; Second, using an electric vibrator upon one of the State's witnesses; Third, using an electric light for the purpose of giving heat or sunlight treatments; Fourth, using galvanic current upon plaintiff's witness; Fifth, making a diagnosis.

At the trial, a series of motions were made by the attorney for the defendant, asking for the dismissal of the complaint, all of which were refused by the Court. The motions appear in the State of the Case, commencing with page 16 and ending at page 25. The rule of the Court is at page 25, line 15.

> "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 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."

N. J. L. 1915 p. 482.

ELSIE DAUBERT testified that there was a sign on the window "Dr. A. C. Heintze," Page 29 L. 30.
That there was a sign on the railing, Dr. Arthur Carl Heintze, Neuropathic Physician, Page 34 L. 30.
That the defendant made an examination of her, P. 35 L. 20; and that he used electrical machines on her, P. 35 L. 30; that he ordered a diet for her, P. 40 L. 15; and that he used an electrical vibrator on her body, P. 43 L. 30.

MARY DEVITA testified concerning the same signs, that the word Doctor was on the same, P. 50 L. 25, and that he used electrical machines on her body, P. 50 L. 10, and also on P. 55 L. 20 and page 57 L. 25.

LENA SCHAFF testified that the defendant treated her son, P. 63 L. 20, and used electrical machines on him, P. 63 L. 30, and that he gave out literature concerning electrical treatments, P. 67 L. 10, also on pages 68, 69, 70, 72 and 73.
The testimony shows that the defendant diagnosed cases, treated cases, used the word doctor and used electric machines which are all contrary to the law which covers the contentions of the defendant in one, two, three and four.

On the fifth contention that the State Board of Medical Examiners failed and refused to recognize the subject of naturopathy, was one of the reasons

that the defendant attempted to introduce the testimony of Dr. Findeson and Walter S. Kipnis.

Counsel for the prosecution is attempting to write in the statute of New Jersey something that does not exist in the statute and cannot excuse the acts of the defendant on the ground that New Jersey does not recognize naturopathy and that the defendant does not have a license from the Medical Board to practice such subjects. This matter has been passed upon by our Courts.

The defendant was admitted to the practice of chiropractic in 1920 under Chapter 4 of the Pamphlet Laws of that year, "AN Act to regulate the practice of chiropractic," by the first section of which "chiropractic" is defined—omitting expressions unimportant in this conection—to be the "art of permitting restoration * * * by placing in juxtaposition the abnormal concrete positions of definite mechanical portions with each other by hand * * ." Electricity is a dangerous instrumentality with the ever present capacity to do serious bodily harm unless restrained within proper limitations. It is essential that its use as applied to the human body should be under the direction of authorized persons. Its use in the instant case was a part of the art of healing. The specific use above referred to in no wise involved the function of hand manipulation. We are unable to conceive of any hypothesis in the proofs in the case upon which the use of electricity in the manner stated is a part of the practice of chiropractic. We consider that the acts of the defendant were contrary to the prohibitory provisions of section 10 of the 1921 act, and that they were not within the exception of section 9. *State Board v. Lezenby, 1 Misc. 20; State Board v. Livesey, 140 Atl. 444; State Board v. Bauden-*

distel, 140 Atl. 886; State Board v. Blechschmidt, 142 Atl. 549.

The judgment of the District Court of the First Judicial District of the County of Bergen is reversed.

State v. DeBraun,
Filed, Nov. 14, 1929.

The Defendant as a Licensed Chiropractor Had No Legal Authority to Commit the Acts Complained of and Therefore the Court's Refusal to Commit Was Erroneous.

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

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

By the terms of the statute the practice of chiropractic is limited to the manipulation of the spinal column by hand. The testimony shows that the defendant in exercising his right to practice under his license far exceeded this limitation.

The Supreme Court has had before it in a number of cases the question of limitation of the method of practicing chiropractic, and the court has held that the practice of chiropractic is limited to the manipulation of the spinal column by hand. The licensee has no right to give electrical treatment or perform any act which is outside of this limitation. His right to practice is a statutory one and must be kept within the limit thereof.

In *State Board of Medical Examiners v. Livesey, 140 Atl. Rep. 444,* the defendant was a licensed chiropractor. He gave the witnesses electrical treatments, using an electric vibrator attached to an electric machine; he sometimes used an electric lamp which he held close to the various parts of the body until they became very warm.

The court at page 444 said:

> "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 accuser was reversed."

In *State Board of Medical Examiners v. Baudendistel, 140 Atl. Rep. 886,* the defendant was a licensed chiropractor and osteopath, but the court held that he was limited in the practice of chiropractic to the limitations fixed in the act.

In *State Board of Medical Examiners v. Blechschmidt, 142 Atl. Rep. 549,* the defendant was a licensed chiropractor. The court said:

> "The acts complained of done by the defendant are not in dispute. In fact, they are admitted by the defendant as true. The only problem, therefore, for solution is, whether the defendant as a licensed chiropractor has the legal right by virtue of his license to commit the acts complained of by the complainant? P. L. 1920, p. 15, Chap. 4, defines the practice of chiropractic. By the terms of the statute, the practice of chiropractic is limited to the manipulation of the body and spinal column by hand. The acts done by the defendant, speaking generally, were the use of a machine called a concusser, light to shine in the eye, which was connected with an electric current."

See also *Medical Board v. De Young, 140 Atl. Rep. 676* and *State Medical Board v. Johnson, 141 Atl. Rep. 591.*

The facts here are not in dispute. The defendant admitted upon his direct testimony (Case, p. 24) that he gave electrical treatments to stimulate or to relax muscles and aid in the adjustment. He gave vibrations by means of carbonic acid gas or compressed air. He used a vibrator of his own invention which he called a Detwiler Pneumatic Vibrator

(Case, p. 33). These electrical treatments he gave to witnesses produced on behalf of the plaintiff.

Therefore, under the cases cited the defendant exceeded his right under the statute and should have been convicted by the trial court as charged.

As to the sixth contention, the statute concerning the subject of this complaint is section ten of Chapter 221 P. L. 1921, which sets forth that—

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

This section also sets forth that the Court is empowered to hear said case upon the filing of a complaint in writing, duly verified, which said verification when made by any member of the 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.

The statute provides that the complaint may be made upon information and belief and the complaint in these cases follows the direction of the statute, viz.: it charges the defendant with having violated a specific provision of the law, to wit, section ten. In fact the complaint goes beyond that in that it alleges the time and manner in which the defendant has vio-

lated the act. The complaint, therefore, describes the offense in the language of the statute.

Our Courts have held that in charging a statutory offense it is sufficient to describe the offense in the words of the statute. *State v. Thatcher, 45 N. J. L. 445; State v. Halsted, 39 N. J. L. 410; State v. Brand, 77 N. J. L. 486; Lowrie v. State Board of Medical Examiners, 90 N. J. L. 54; State v. Morris, 98 N. J. L. 621.*

In *State v. Brand, 77 N. J. L. 486,* the opinion of the Court of Errors and Appeals was delivered by Chancellor Pitney, who, at page 487, said:

> "The general rule is well established that in charging a statutory offense it is sufficient to lay the charge in the words of the act, without a particular statement of facts such as will bring the accused within its operation."

In *Lowrie v. State Board of Dental Examiners, 90 N. J. L. 54,* Mr. Justice Swayze, speaking for the Court, said:

> "We think that when, as in this case, the offense is charged in the language of the statute, it is not necessary to set forth in the complaint each specific instance that may be relied on as evidence of the practice."

So that, Courts of this State have held that a complaint as issued in this cause is within the statute and a legal complaint.

As to the seventh contention, the Act is Unconstitutional; that point has been passed upon by our Courts and is within the Police Powers of this State.

"The Police Power is an inherent attribute of sovereignty, and may be exercised to conserve and promote the safety, health, morals, and welfare of the public. *Inland Steel Co. v. Yedinak, 87 N. E. 229, 172 Ind. 423, 139 Am. St. Rep. 389.*

"The power to prescribe regulations demanded by the general welfare for the common protection of all is known as the 'police power' and is inherest in every sovereignty. *Cochran v. Proston, 70 Atl. 113, 114; 103 Md. 220; 23 L. R. A. (N. S.) 6113; 129 Am. St. Rep. 432; 15 Ann. Cas. 1048.*

" 'Police power' is nothing more nor less than the power of government inherent in every sovereignty. While generally speaking the police power of the state is said to extend to the protection of the public health, the public morals, and the public safety, the law does not recognize these as the extent of the power, but it embraces regulations designed to promote public convenience and general prosperity as well, and the rights of a sovereign state to regulate public service corporations rests on the police power of the State." *200 U. S. 561, 592.*

That the statute and all proceedings thereunder are violative of the defendant's constitutional rights, this Court has upheld this statute in the case of *State Medical Board v. Johnson, 141 Atl. 591,* and in passing upon the point here raised said:

"The first point argued for the prosecutor is with reference to the denial of the motion referred to. The Prosecutor insists that the medical act can only apply to those who actually prac-

tice medicine or surgery and that the amendments are unconstitutional because they have been extended to include offenses not embraced in the original act of 1894. We consider the title broad enough to include offenses under the amendments to the act. As was said by Mr. Justice Van Syckle in the case of State v. Town of Union 33 N. J. L. 350: 'The unity of the object must be sought in the end which the legislative act purposes to accomplish and not in the details provided to reach that end.' The same idea was expressed by Mr. Justice Garrison in Moore v. Burdett, 62 N. J. L. 163, when he said the title of an act was a label and not an index."

As to the eighth contention, the Statute delegates to the State Board of Medical Examiners the power to make rules for the regulation of physicians and surgeons in this State, Pamphlet Laws 1921 p. 36.

Medical Board vs. Johnson, 141 Atl. 591.

We respectfully submit that the judgment of the Court below should be affirmed and the writ dismissed.

WILLIAM A. STEVENS,
Attorney General of N. J.

ROBERT PEACOCK,
Asst. Attorney General of N. J.

NEW JERSEY COURT OF ERRORS AND APPEALS.

ARTHUR CARL HEINTZE,
Prosecutor,

v.

THE NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS,
Respondent.

ACTION AT LAW.

ON APPEAL FROM NEW JERSEY SUPREME COURT.

BRIEF OF THE DEFENDANT-PROSECUTOR.

STATEMENT.

The defendant, Arthur Carl Heintze, was charged with violating Section 10 of Chapter 221, Pamphlet Laws 1921, and it was charged that he commenced and continued the practice of medicine and surgery within the meaning of Section 8 of the said Act.

The case was tried before the Camden City District Court on the eighth day of November, 1929, and the Court found the defendant guilty and gave judgment that the plaintiff recover of the defendant two hundred ($200.00) dollars penalty and costs and/or in lieu thereof thirty days in the County Jail.

The defendant was licensed to practice chiropractic in the State of New Jersey by the Chiropractic Board which was created by an Act of the Legislature in 1920, and the certificate which was offered in evidence and marked an exhibit appears at pages 105 to 106 of the State of the Case, and designates the defendant as Dr. Arthur C. Heintze.

According to the evidence presented by the witnesses for the plaintiff, the Acts with which the defendant was charged are as follows: First, using the title doctor or the letters Dr. in connection with his name; Second, using an electric vibrator upon one of the State's witnesses; Third, using an electric light for the purpose of giving heat or sunlight treatments; Fourth, using galvanic current upon plaintiff's witness; Fifth, making a diagnosis.

I.

THE ACT UNDER WHICH THE PROSECUTOR WAS CONVICTED, 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 22, 1894, WITH THE AMENDMENTS THEREOF AND SUPPLEMENTS THERETO IS UNCONSTITUTIONAL IN THAT IT DOES NOT REASONABLY RELATE OR TEND TO THE ACCOMPLISHMENT OF THE PROTECTION OF THE PUBLIC AND IS HENCE AN INVALID EXERCISE OF THE POLICE POWER AND VIOLATIVE OF THE PROSECUTOR'S RIGHTS UNDER THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

In order that a statute may be sustained as an exercise of the police power, the Courts must be able to see that the enactment has for its object the prevention of some manifest evil or the preservation of the public health or general welfare and that there is some real, clear and substantial connection between the assumed purpose of the enactment and the actual provisions thereof, and that the latter do in some plain, appreciable and appropriate manner tend toward the accomplishment of the object for which the power is exercised.

Lawton v. Steele, 152 U. S. 133;
Mugler v. Kansas, 123 U. S. 623;
State v. Hoboken, 33 N. J. L. 280.

The appellant contends that the Medical Act does not serve as a protection to the public, and that if such end was the assumed original basis of the passage of the Act then there is no reasonable connection between the basis and the means employed in the statute to accomplish such purpose.

The drugless practice of naturopathy is neither a manifest evil nor a dangerous instrumentality. Practitioners of such sciences use in their practice no modalities that are inherently dangerous but on the contrary, rely entirely upon the simple and natural processes of the innate healing forces. The Medical Board acting, by, through and under the aforesaid Medical Act gives full recognition solely to the allopathic and homeopathic and eclectic schools of medicine. It may well be the case that a majority of the citizens of the State of New Jersey believe in the philosophy which underlies the teachings of these schools of medicine. On the other hand, it is a well-known and admitted fact that there are those citizens of the State of New Jersey, well over a million in number, who are not in accordance with the views as set forth by the aforesaid schools of medicine and who deny that there is any scientific basis for the philosophies underlying these systems. Such latter class of people desire assistance and aid from a physician who does not use drugs, serums or surgery to alleviate their ailment; but who rely solely upon the stimulation

and use of natural forces and remedies for the accomplishment of this purpose. The drugless systems have philosophies and practices and modes of application totally distinct and often diametrically opposite to the philosophy and practices of the regular school of medicine. Those persons who may be in accordance with these latter views have the constitutional right to be treated by a class of physician who conforms to their wishes. The effect of the Medical Act, however, is to deny them this basic right. The Medical Board of the State of New Jersey having an overwhelming majority of regular medical men has failed to recognize the necessities of the public for such practitioners and there is, therefore, no way in which a citizen of the State of New Jersey can obtain such services under the outstanding regulations imposed by the Medical Board. By way of illustrations thirty-three States have recognized these conditions and have established independent chiropractic and naturopathic examining boards.

The Medical Act and the rulings of the Medical Board under such Act fail to allow chiropractors or practitioners of the other drugless systems to add safe and harmless methods of treatment because of unnatural definitions forced upon the profession by antagonistic interests by simple proofs of competence without being burdened by impossible qualifications; namely, the necessity of attending regular medical schools which are the only ones recognized by the Medical Board.

The medical profession may practice any system of healing it chooses without proof of competence

excepting in drugs, serums and surgery, whereas, the drugless profession must prove competence in any or all of their practice. Too, there is no provision for examination of applicants for licensure in those subjects which are the basis of drugless teaching and philosophy but rather there is a compulsion that applicants be taught studies and be examined on matters that bear no relation to their practices and are totally contrary thereto.

The opinion of Judge Lansden in *Norman and DeLoach v. Hastings, et al.*, 21, Shelby Equity (Tennessee), shows that consideration was given to the injustice of conditions in the State of Tennessee similar to those existing in New Jersey.

> "The Court thinks that chiropractors cannot be classed along with charlatans and fakers. This science of healing is well developed and recognized in many jurisdictions and many believe in its efficacy.
>
> It is not suggested on the record that the practice of the science is in any way deleterious to the human body.
>
> Our statutes undertake to provide that no one shall practice any healing art until he has been examined by our various boards and duly licensed. As a condition to obtaining license the applicant must pursue a course of study covering many subjects. Chiropractors have no occasion to apply much of this learning. The Court is of the opinion that since their treatments are not shown to be injurious to anybody—they do not give medicine, operate or subject the body to injurious manipulation—the requirement that

they study and be examined on subjects in no way pertaining to their occupation is an arbitrary and unreasonable attempt to restrict their liberties and the liberty of the people who wish to patronize them. Such regulation has no reasonable tendency to promote the public safety and welfare.

The Court recognizes fully the power of the Legislature to regulate the practice of chiropractic by appropriate legislation. A board may be created to do this, or the present board empowered to regulate this profession under suitable regulations; an innocent business, however, cannot be prohibited under the guise of regulation.

Our statutes, therefore, if they may be said to prohibit the practice of chiropractic, are invalid to this extent."

Medical laws can have as their purpose only the protection of the public against incompetence, it cannot have as its purpose the giving of a monopoly to any system or cult but should establish an equilibrium of interests. It cannot constitutionally deprive the public of any one system nor put its stamp of approval on any one system to the exclusion of another. Obviously it is within the power of Legislature to protect the public against experiments and regulate those parts of the practice of medicine which are inherently dangerous and unsafe.

The effect of the New Jersey Medical Act in view of the foregoing is a clear deprivation to the public of the services of naturopaths and other drugless

practitioners and a deprivation of the right of a citizen to contract with any practitioner whose service he considers desirable; therefore, the aforesaid Medical Act and particularly the amendment of 1921 is unconstitutional and the prosecutor respectfully submits that his conviction under such Act be reversed.

II.

THE MEDICAL ACT AFOREMENTIONED IS UNCONSTITUTIONAL IN THAT IT PROVIDES FOR AN ARBITRARY DELEGATION OF LEGISLATIVE POWER RESULTING IN AN UNFAIR DISCRIMINATION AGAINST THE PROSECUTOR AND VIOLATIVE OF HIS RIGHTS UNDER THE FOURTEENTH AMENDMENT.

The Legislature of the State of New Jersey has by the Medical Act delegated unto a Medical Board of nine members the power to prescribe examinations for license of all classes of physicians to prescribe for the recognition of limited branches of medicine in their discretion and to make rules and regulations governing these latter practices. Said Medical Board consists of nine members of which there is one drugless practitioner (chiropractor) and one osteopath, leaving a clear majority of seven members whose system of medicine has for its basis the use of drugs, serums and surgery.

It is a self-evident fact that the economic inter-

ests of those members following the drug-serum systems are diametrically opposed to those of the drugless practitioner, and when the majority of the board in subservience to their economic interests promulgate rules and regulations in an unfair and discriminatory fashion there is an impairment of the rights of the drugless practitioner to earn a livelihood and the public of their services.

The delegation of power by the Legislature to a Board resulting in such discrimination must be declared unconstitutional as a violation of the rights of the drugless practitioner and more especially the prosecutor under the Fourteenth Amendment of the United States Constitution.

The effect of the Medical Act and the rules of the Medical Board rather than establishing the competence of the applicant to practice the healing art merely establishes the competence of the applicant to follow the practices and beliefs of the Medical Board. The delegation to the Medical Board of the right to make rules governing the drugless professions denies these professions the right to autonomy.

The rules adopted by the Medical Board have an entirely unscientific basis and illustrate their almost malicious intent to discriminate against the drugless practitioner and in favor of those regular systems of medicine having a majority of the representation in the Board. By way of illustration, the Medical Board in its rules describes spondylotherapy, chiropractic and neuropathy incorrectly. Their definitions may be found on pages 110 and 111 in State of Case.

The correct definitions are as follows: Spondylo-

therapy (Spondylo, the spine; Therapy, to heal) is the science of ascertaining the disturbed physiologic conditions and pathologies by medical and surgical diagnosis by the use of pressure and concussion of the spine by hands and apparatus and the use of electricity to ascertain the statuses of the reflexes of the nervous system, and the correction of such findings by the use of concussion and pressure, heat and cold and electricity to the spine. Spondylotherapy is the combination and modification of chiropractic and neuropathy.

Chiropractic is the science of removing all interferences to the flow of nervous energy to all parts of the body by the application of the hands and apparatus to the spine, it includes all methods of diagnosis.

Neuropathy is the science of balancing the circulation of the blood in the various parts of the body by spinal manipulation and hydrotherapy and electricity. It includes the correction of the diet and the massaging of the body in such a manner as to accelerate the flow of the lymph through the body. It excludes the use of drugs and surgery.

Spondylotherapy is not an independent system but a part of the other systems and is practiced and taught by them. There is no separate school or college teaching it. It is not taught in medical schools and the Board may refuse recognition to any such school if it existed.

The Board refuses the chiropractor the right to use spondylotherapy in spite of the fact that it is taught in most chiropractic schools. The Board can require four years for schooling in some school of

spondylotherapy that does not exist on top of a chiropractic education when the subject requires about one month maximum to learn assuming the basic subjects have been learned.

A naturopath who practices all of the drugless methods correlated to the nature cure principle and in accordance with which these methods must comply, would, according to the rules of the Medical Board, require ten certificates, ten examinations and forty years of schooling.

The University of Pennsylvania devotes forty hours to physiotherapy comprising hydrotherapy, electrotherapy, mechanotherapy, massage and the allied sciences in the regular medical course and in its physio-therapy course one year is required and an age limit set at forty years, so if a chiropractor would add these methods to his armamentarium he would be excluded if over forty years of age and if under forty the medical school would refuse him admission if they knew he intended practicing the drugless methods. The medical practitioner may practice all of these methods without examination, study or any proof of competence in them. By the rules the Medical Board may prosecute any practitioner of suggestive therapeutics for using psychotherapy or magnetic healing which is also wrongly defined.

Magnetic healing is the application of the magnetic and electrical properties of the operator, through his or her hands, to the patient by approach or contact with the hands.

The Medical Board in its ruling has prohibited the drugless practitioner from treating infectious, contagious or venereal diseases. Such rulings cannot be

justified under the Medical Act and seems arbitrary and unreasonable resulting solely in a discrimination against the drugless practitioner and, of course, resulting also in a deprivation to the public of the services of such a practitioner.

Any standards set by the Board can have as their purpose only the protection of the public. When such standard is over-stepped in relation to recognition of schools or length of studies as well as in matters previously mentioned they result in arbitrary and unreasonable discrimination against the drugless science and must be held invalid. A clear illustration of discrimination is afforded by the Medical Board's treatment of the practice of electrotherapeutics when it deprives the chiropractor of the right to add this modality to his methods, whereas, the regular practitioner may add this method without proof of competence. Thus the use of electrotherapeutics may be strangled and the public deprived of the services of that science.

The rule restricting the drugless practitioner from treating infectious, contagious or venereal diseases is not justified by any provision of the law. Such rule is arbitrary, restrictive, aiming at monopolization and deprives the public of the services that the drugless profession can perform better than the regular medical profession.

The rulings of the Medical Board have made it impossible for a chiropractor or other drugless practitioner to add electrotherapeutics to his methods. Such addition cannot be in any sense dangerous to the welfare of the public. The regular school of medicine had always considered electrotherapeutics

as quackery until recently when the power to control its practice came into their hands.

The Board may use this power to strangle the use of electrotherapeutics and deprive the public of the services of that science since the regular practitioners of medicine do not adopt its use and the drugless profession is excluded from acquiring the right to use it. The medical profession is educated in such a manner as to exclude the philosophy of electrotherapeutics.

The Board may interpret the law liberally toward a medical applicant and strictly toward drugless applicants and it does so. Medical fads may be approved by the Board without responsibility to the public or the State. Perfectly rational methods can be and are disapproved of by the Medical Board. The purpose of the law is to establish the competence of the applicant to practice the healing art. It does not do this, it merely establishes the competence of the applicant to follow the practices and beliefs adopted by the Medical Board and the relation of such practices to the safety of the public is questionable.

The power of the Medical Board to recognize or refuse to recognize any college enables it to compel the study of subjects to be forced upon the curriculum of schools whose philosophies are opposed to such studies. These subjects bear no relation to the public welfare, but do bear a relation to the economic interests of the manufacturers of certain therapeutic products.

There is no justification in scientific fact nor in popular understanding for the grouping of all sys-

tems of healing under the generic term of practice of medicine since none of the parts can be treated legally in the same manner which the law attempts to do. There is a great variance in the degree of danger to the public in the different systems of healing and requires different regulations.

With regard to the Section 6, Chapter 136, P. L. 1921, we remark: The medical profession acknowledges its inability to cure certain diseases and forbids any one else treating such diseases. There is no justification for the claim that certain diseases are incurable. Such so-called incurable diseases have been cured by practitioners of the drugless schools. The law denies these practitioners the right to inform the public of these facts; this is restrictive and deprivatory and not protective to the public but an attempt to control competition.

III.

THE MEDICAL ACT AND MORE PARTICULARLY SECTION EIGHT THEREOF IS UNCONSTITUTIONAL IN THAT IT PROHIBITS THE PROSECUTOR FROM PERFORMING THOSE ACTS WHICH ARE NECESSARILY INCIDENT TO THE PRACTICE OF CHIROPRACTIC, TO WIT, DIAGNOSIS AND THE RIGHT TO USE THE TITLE "DOCTOR."

The prosecutor is a chiropractor licensed by virtue of the Act of the Legislature of the State of

New Jersey by certificate of the State Board of Chiropractic Examiners filed in the office of the Secretary of State, November 24, 1920, and recorded in Book one on page 112 (S. C., page 106) said certificate is issued in the following name, Doctor Arthur C. Heintze.

The prosecutor's conviction was based, *inter alia,* upon a violation of the Medical Act specified as use of the title "Doctor." The opinion of the Supreme Court of New Jersey upon appeal of the above case points out that it may well be that the use of the word "Doctor" by a regularly licensed chiropractor is permissible. The prosecutor is left entirely in doubt as to whether the use of this title is a violation of the Medical Act, and requests an opinion of this Honorable Court setting forth his rights in this regard.

It would indeed be singular that a certificate of license under the seal of the State of New Jersey bear the name, Doctor Arthur C. Heintze, and that the use by the prosecutor of the word "Doctor" be construed to be a violation of the Medical Act.

The prosecutor was as aforesaid licensed under Chapter Four, Pamphlet Laws 1920. In that Act among the examination subjects prescribed were diagnosis of disease and hygiene. Chapter Four, P. L. 1920, was repealed by Chapter 136, Pamphlet Laws 1921, and the Legislature in repealing that Act used the following language:

> "Provided that any person holding a valid license, heretofore issued, in due course by virtue of the professions of the Act above mentioned (Chapter 4, P. L. 1920) shall be au-

thorized to be continued to practice pursuant said license as though no Act under which said license had been issued had not been repealed."

Therefore, all persons who are licensed under Chapter Four, P. L. 1920, are still governed by the provisions of that Act. Said statute not only recognized the right of the chiropractor to diagnose but in fact required a complete knowledge of the subject of diagnosis.

The State Health Act, 1 C. S., page 1499, Sections 89-247, requires every physician within twelve hours after his first professional attendance upon any person who is suffering from any contagious, infectious or communicable disease to report such disease to the local health authorities. At page 1505, Sections 89-273, physicians are required to report each case of mental deficiency or epilepsy.

It seems quite obvious from a perusal of these statutes that in order for a limited practitioner, such as the prosecutor, to make such report that the law not only implies but requires him to diagnose communicable and contagious diseases.

It is essential that the mandatory provisions of the health laws and the laws regulating the practice of medicine go hand in hand and it seems indeed a great absurdity to condone a conviction of the prosecutor for violation of the Medical Act in using diagnosis whereas he would have been guilty of violation of the State Health Act had he failed to diagnose; therefore, it is respectfully submitted to this Honorable Court that the prosecutor's conviction of the Medical Act be set aside for these reasons.

IV.

THE MEDICAL ACT AND MORE PARTICULARLY SECTION EIGHT THEREOF IS UNCONSTITUTIONAL IN THAT IT IS AN UNFAIR DISCRIMINATION AGAINST THE PROSECUTOR IN PROHIBITING HIM FROM USING AN ELECTRIC LAMP, ELECTRIC VIBRATOR, GALVANIC CURRENT, PRESCRIBING A DIET, AND OTHER MODALITIES COMPRISED IN THE SCIENCE OF NATUROPATHY AND IS A VIOLATION OF THE PROSECUTOR'S RIGHTS UNDER THE FOURTEENTH AMENDMENTS.

The appellant is well educated in the science of electrotherapeutics, having studied the subject approximately thirty years ago, having taken a year's course of study in the school under Doctor Thomas Edwin Eldridge in Philadelphia and in other proper schools which he has attended.

Electrotherapeutic apparatus has been used by the lay public for many years and there is no proof that such use is dangerous or deleterious, it has never been until hereto considered as a part of the practice of medicine but has contrary-wise been declared by the medical profession to be quackery and even medical men adopting it have been ostracized and expelled from their medical societies.

It is further true that in offices of regular practitioners where such electrical apparatus is used, it is

operated by an assistant who has not gone through any course of study such as is prescribed by the rules of the Medical Board. It seems, therefore, highly unreasonable that the result of the Medical Act and the rules thereunder should be to prohibit the appellant the right to use the electrical apparatus of the methods of his operation and at the same time to allow such use in the office of a regular doctor by an assistant who has made no study solely for the reason that it is the office of a regular doctor.

The chiropractic treatment is assisted by electrotherapy and since the public is in no manner endangered by chiropractors using it he should be permitted to do so without molestation by legal technicalisms.

The rules indicate an assumption that electricity can be used in only one way, the allopathic way. Such assumption is not correct, as electricity can be used for a multiplicity of purposes, many of which are auxiliary to the purpose of chiropractic besides being a part of naturopathy and other drugless systems.

In like manner that a homeopath uses the same drugs as the allopath but in a totally different manner and for different ends, so does the drugless practitioner use electricity differently from the regular school of medicine.

Further Acts under which the appellant's conviction was sustained by the Supreme Court were the use of an electrical vibrator and the use of an electric lamp.

In *State Board of Medical Examiners v. Dussinger,* 9 M 423, 154, Atlantic, 325, the defendant was

tried for violation of the Medical Act by the use of an electric vibrator and sun ray lamp in a gymnasium.

The District Court held that no electrical treatments were given. The matter was taken up to the Supreme Court on certiorari, the Court held an opinion by Justices Parker, Campbell and Bodine that no electrical treatments were given. The effect of such holding was to allow free and untrammelled use of a vibrator and electric sun ray lamp to the proprietor of a gymnasium and it is not essential nor even relevant that he show any course of study and the proper use of such modalities. The prosecutor, however, having undertaken a course of study in the use of electrical modalities is convicted of a violation of the Medical Act by the use of such modalities.

The inconsistency of the two holdings is indeed apparent, and, therefore, even upon the assumption that the use of an electric lamp and vibrator involved a use of electricity such as contemplated by the Medical Act in the light of *State Board of Medical Examiners v. Dussinger, supra*, the conviction of the prosecutor upon these grounds must be reversed. Furthermore, a vibrator does not cause current to enter a patient. A vibrator performs nothing but mechanical rubbing or stroking, the apparatus is merely driven by electricity. Similarly, electricity does not enter a patient from a sun ray or other lamp or heat-producing mechanism.

Since the science of dietetics as well as other modalities can be used from this philosophical viewpoint and being assistive to the recovery of the health and further since it is embodied in the science

of hygiene which a chiropractor must study and pass an examination and further since there can be no harm to the public from such practice, the appellant should be permitted its use.

In view of the foregoing it is respectfully submitted that the appellant's convictions of the violation of the Medical Act by reason of his use of electric lamp, electric vibrator, galvanic current and prescribing a diet should be reversed in that his conviction thereunder would be an unfair discrimination against him as a licensed chiropractor.

V.

THE MEDICAL ACT IS UNCONSTITUTIONAL IN THAT IT PROVIDES FOR A SUMMARY PROCEEDING WITHOUT A TRIAL BY JURY.

The Constitution of the State of New Jersey (Constitution of 1776, Sec. 11), provides that the inestimable right of jury trial shall remain confirmed as a part of the law of this colony without repeal forever. The subsequent Constitution of 1844 (Sec. 7) in accordance with the principle previously enunciated provides that the right of trial by jury shall remain inviolate. The language has been interpreted to mean that where the right to a jury existed before the Constitution, it could not be taken away by the Legislature.

It has been repeatedly held that a prosecution under the Medical Act is a civil procedure.

State Board of Medical Examiners v. Curtis, 94 N. J. L. 324;
State Board of Medical Examiners v. Giedroyc, 91 N. J. L. 61.

Therefore, proceedings under said Act are in the nature of a civil suit for the recovery of a debt, *i. e.,* when a person violates the provisions of the Medical Act a debt is created with the violator as the obligor and the Medical Board as the obligee, for amounts collected under such proceedings do not go to the State of New Jersey but to the State Medical Board. Upon non-payment of said debt the violator may be arrested. Provision is made in the statute that suits for this debt shall be brought in the District Court.

Such actions for the recovery of money due are not new to the law but, on the contrary, have been recognized from antiquity and more particularly were recognized by the law at the time of the adoption of the aforesaid Constitution of 1776 and the subsequent Constitution of 1844. If, then, there was a right to a jury trial in actions for the recovery of sums due at the time the aforesaid Constitutions were adopted it would not be within the power of the Legislature to abrogate such Constitutional right.

In actions for the collection of money due in the District Court under the District Court Act it is entirely possible that a jury trial may be waived, but in the decisions upholding the constitutionality of such waiver it is expressly noted that such waiver does not take away the right of trial by jury and that the inestimable right remains as it was theretofore and that consequently the right remains in-

violate within the constitutional limitations imposed by the aforesaid Constitution of 1844.

The Medical Act, however, does not provide for a waiver but completely takes away from the alleged "debtor-violator" the right to have the authenticity of his debt determined by a jury of his peers. Here is a right and privilege which has for all time heretofore been existent and is by the provisions of the Medical Act absolutely denied the alleged "debtor-violator." It is difficult to see how there could be any more direct violation of the constitutional provisions to the effect that the right to a trial by jury shall remain inviolate.

For these reasons it is respectfully submitted that the conviction of the prosecutor be reversed.

ARTHUR CARL HEINTZE,
Pro Se.