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New Jersey Supreme Court

10

STATE BOARD OF MEDICAL EXAMINERS OF NEW JERSEY, *Plaintiff,* *v.* COMETIS DEYOUNG, *Defendant.*	In Certiorari.

New Jersey, ss.: 20

[Seal.] The State of New Jersey to Thomas E. Duffy, Esquire, Judge of the District Court of the City of Passaic, GREETING:

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

30

40

Exhibit 1.

Witness, William S. Gummere, Chief Justice of our Supreme Court at Trenton, this twenty-eighth day of December, nineteen hundred and twenty-six.

EDWARD J. KELLEHER,
Clerk.

EDWARD L. KATZENBACH,
Attorney-General,

Attorney for State Board of Medical Examiners of New Jersey, Prosecutor.

The judgment, order and proceedings herein, with all things touching and concerning the same, as fully and entirely as they remain in the District Court of the City of Passaic, I do hereby certify under the seal of the court in the schedule hereto annexed, as within I am commanded.

THOMAS E. DUFFY,
Judge of the District Court of
(Seal) the City of Passaic.

Exhibit 1.

STATE BOARD OF MEDICAL EXAMINERS OF NEW JERSEY,
Plaintiff,
v.
COMETIS DEYOUNG,
Defendant.
} Complaint.

State of New Jersey, } ss.:
County of Mercer }

James J. McGuire being duly sworn according to law on his oath says that he is a member of the

Exhibit 1.

State Board of Medical Examiners of New Jersey, and that deponent is informed and believes that during the months of February, March, April, May, June, July, August, September, October, November and December, nineteen hundred and twenty-five, and during the months of January, February, March, April and May, nineteen hundred and twenty-six at the City of Paterson in the County of Passaic and State of New Jersey, one Cometis De Young of the City of Paterson in the County of Passaic 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 Cometis De Young at the time and place aforesaid, did commence and continue the practice of medicine and surgery without first having obtained and filed a license for such practice issued by the State Board of Medical Examiners of New Jersey, as provided for under the provisions of said act, in that the said Cometis De Young at the time and place aforesaid, did hold himself out as being able to diagnose, treat, operate and prescribe for human diseases, pains and physical conditions, and did offer and undertake to treat, operate and prescribe for human diseases, pains, injuries, deformities and physical conditions, and did at the time and place aforesaid treat and prescribe for the same, all of which is con-

Exhibit 1.

trary to and in violation of said section ten of said act and against the form of said statute.

Deponent further says that on the seventh day of January, ninteen hundred and twenty-five, said Cometis De Young was convicted in the District
10 Court of the City of Passaic of having violated the provisions of Section Ten of the above recited act, and that the violation first above mentioned is another and a continuation of the violation for which said defendant was convicted as aforesaid, 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 Cometis De Young has incurred the penalty of five hundred dollars prescribed by Section Ten of the act
20 above mentioned, as such section was amended, as aforesaid, for the aforesaid violation, and prays that the said Cometis De Young may be apprehended and dealt with according to law.

JAMES J. McGUIRE.

Sworn and subscribed before me this eighteenth day of May A. D. nineteen hundred and twenty-six.

FRANCIS H. McGEE.
M C C of N. J.

30

40

Exhibit 2.

Passaic County, ss.:

The State of New Jersey to any Constable of the County of Passaic or to the Sergeant-at-Arms of the
(Seal) District Court of the City of Passaic or to the Inspector of the State Board of Medical Examiners of New Jersey.
10

WHEREAS, Proof has been made before me under oath that during the months of February, March, April, May, June, July, August, September, October, November and December, nineteen hundred and twenty-five, and during the months of January, February, March, April and May, nineteen
20 hundred and twenty-six, at the City of Paterson in the County of Passaic and State of New Jersey, one Cometis DeYoung of the City of Paterson in the County of Passaic 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
30 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 Cometis DeYoung 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 approxed April twelfth, nineteen hundred and fifteen, without first having obtained and filed a license for such practice issued by the State Board of Medi-
40 cal Examiners of New Jersey, as provided for un-

Exhibit 2.

der the provisions of said act, contrary to and in violation of said Section Ten of said act and against the form of said statute.

And whereas, proof has been made before me under oath that on the seventh day of January, nineteen hundred and twenty-five, said Cometis DeYoung was convicted in the District Court of the City of Passaic of having violated the provisions of Section Ten of the above recited act, and that the violation first above mentioned is another and a continuation of the violation for which said defendant was convicted as aforesaid, 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 Cometis DeYoung so that you have him forthwith before the District Court of the City of Passaic at Prospect St. and Howe Ave. in said City of Passaic in the County of and State of New Jersey, to answer unto the State Board of Medical Examiners of New Jersey, who sue for one penalty of five hundred dollars for the aforesaid violation, and that the said defendant may be dealt with according to law.

Witness, Thomas E. Duffy, Esquire, Judge of the District Court of the City of Passaic this nineteenth day of May A. D. nineteen hundred and twenty-six.

D. DeMuro,
Clerk.

(Endorsed)

By virtue of the within warrant I have arrested the defendant Cometis DeYoung, and presented his body in court.

Thomas A. Hopkins,
Sergeant-at-Arms.

Dated May 19, 1926.

(26751)

Complaint.

IN THE DISTRICT COURT OF THE CITY OF PASSAIC.

Hon. Thomas E. Duffy, Judge.

State of New Jersey, }
County of Passaic, } ss.:

State Board of Medical Examiners of New Jersey,
v.
Cometis DeYoung.
} Demand $500.00.

E. L. Katzenbach, Attorney of Plaintiff.
Alex. MacLeod, Attorney of Defendant.

May 18, 1926, a warrant was issued in the above-stated cause returnable May 19, 1926 A. D., at 10 o'clock A. M., and was returned by the Sergeant-at-Arms as follows:

By virtue of the within warrant, I have arrested the defendant, Cometis DeYoung, and presented his body in court.

Thomas A. Hopkins,
Sergeant-at-Arms.

Dated May 19, 1926.

May 18, 1926, complaint filed.

Defendant filed bond for $1,000.00 and case adjourned to June 16-18, September 17, November 12, December 3.

December 3, 1926, hearing by the Court.

Alfred W. Denham, steno., sworn.

Erma Spruce, sworn.
P-1.—Urinal report April 1, 1926.
P-2.—Date card April 9, 1926.
P-3.—Diet instruction paper.
P-4.—Adv. card of DeYoung health office.
10 P-5.—Adv. card of DeYoung health office.
Faustine Hess, sworn.
Madeline Berger, sworn.
Christina Belle, sworn.
Delia Orr, sworn.
P-6.—Certificate of Medical Board.

This evidence being closed and submitted to Court, judgment was given by Court in favor of the defendant, complaint dismissed.

20 I hereby certify that the foregoing is a true copy of the proceedings in the above-captioned case.

DOMINICK DEMURO,
Clerk.

Testimony.

DISTRICT COURT OF THE CITY OF PASSAIC,
NEW JERSEY.

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

v.

COMETIS DEYOUNG,
Defendant.

Transcript of testimony taken in the above-entitled cause at the hearing held in the District

40 Court of the City of Passaic, on Friday, the third

day of December, A. D. 1926, before Thomas E. Duffy, Esquire, Judge of that court, at ten o'clock in the morning.

APPEARANCES:

GROVER C. RICHMAN, Esq., for the Plaintiff. 10
ELMER ROMINE, Esq., and ALEXANDER MACLEOD, Esq., for the Defendant.

A. W. DENHAM, Trenton Trust Building, Trenton, N. J. Sworn as stenographer. March 17, 1927.

Mr. Romine: If the Court please, I want to move to dismiss the complaint in this case, on the ground that it does not comply with the rules laid down in such cases, and 20 does not set forth the facts upon which to base a charge or complaint. We can start out by saying that this is a summary proceeding, in fact, the act of 1921 so classifies this sort of a case as a summary proceeding. Now, having recourse to all the cases of the same nature, under the automobile act, or under the violation of an ordinance, or whether it be for the violation of the Motor Vehicle Act, they all come within the same 30 category. If your Honor will refer to this complaint, it charges that Cometis DeYoung, of the City of Paterson, County of Passaic, did violate Section Ten of the 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 22, 1894. as said Section Ten was amended 40

by an act approved April 8, 1921, in that the said Cometis DeYoung, at the time and place aforesaid, did commence and continue the practice of medicine and surgery, within the meaning of Section Eight of the said act, as said section was amended by the act approved April 12, 1915, 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 the said act, contrary to and in violation of said Section Ten of said act, and against the form of the statute. That's merely a reference to the law, and does not set forth any facts which would show a violation of the statute, nor which would show what in any particular this man is alleged to have done, which they claim is a violation of the statute. We have recourse to the various cases in New Jersey, and we find that from the very earliest date one of the things necessary to be done was to set out in the complaint the facts.

The Court: Did you read the complaint or the warrant?

Mr. Romine: I am reading. I read the warrant, but I think the complaint is the same.

The Court: No. It is not. The complaint does on, did commit and continue the practice of medicine and surgery, without first having obtained and filed a license for such practice issued by the State Board of Medical Examiners of New Jersey, as provided for under the provisions of said act, in that the said Cometis DeYoung, at the time and

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

Mr. Romine: That does not alter my motion one bit, because the language used therein is merely a quotation from Section Eight of the act of 1915. In other words, they are merely quoting the general verbiage of the act, without pointing out the facts upon which they intend to rely, if he diagnosed, when and in what manner did he diagnose; if he treated, when and in what manner did he treat; if he operated, when and in what manner did he operate. We are entitled to know the facts. I suppose from the warrant they were limiting themselves, as I quoted from the warrant, but it makes no difference, if they use the general verbiage, as your Honor read, because its merely the quotation from Section Eight. If we go back to the earliest case on this subject, we will find that beginning with the complaint against Hatfield, Report 87 law, page 124, on page 127 the Court said the pleader should have set out the facts, from which it would be made to appear that the science practiced by the prosecutor came within the term of crafty science as indi-

cated by the act. Following that case came the case of Peer *v.* Dixon, I happened to be in that case, reported in 82 law, 367. The Court said there it was necessary to the validity of the complaint, that was based on the violation of an ordinance, it should show upon its face that the place where profane and obscene language was used, was a public place, for it is the public character of the place where obscene or profane language is used that makes the use of such language an offense within the meaning of the ordinance. There is the case of Tanner against the Town of Morristown. In that case I appeared for the defendant. We challenged the complaint, which was taken to the Supreme Court on certiorari, and reversed, and the Supreme Court said in 1916, to charge a person in the language of the ordinance with having committed a breach of the peace, or a riot, is to charge such person with a legal conclusion, predicated upon undisclosed facts; so you will see my objection goes to the language that they used in this complaint, merely reciting the general verbiage of Section Eight of the Laws of 1915. The Court said, in the Tanner case, the facts should be set out, so that the accused may know what he is called upon to meet. To properly charge a person with cursing or swearing, the words used are required to be set out in the complaint. We don't know what we are required to meet. A bill of particulars was served upon them, I understand, and they refused to answer it, but to use the general verbiage of the stat-

ute, in that he held himself out as being able, etc., in this case, without charging what he did following the allegation that he held himself out, is certainly insufficient. We have a later case in 1922, case of MacEvoy *v.* Bennell. In that case I appeared for the prosecutor, the defendant at the trial of the original complaint. There they charged under a certain section that the defendant did drive at an excessive rate of speed, and a speed that was greater than reasonable, following the words of the Motor Vehicle statute, and in a reckless manner, and at such an excessive rate of speed as to endanger the life and limb and endanger the property of other persons, in violation of Section Sixteen of the Laws of 1921. The Supreme Court, in passing upon that, said the complaint does not allege what rate of speed Mr. MacEvoy was driving, and is barren of any allegation disclosing facts which would show how or in what manner Mr. MacEvoy was reckless. In the complaint, the charge should be set out, so that the accused may know what he is called upon to meet. This case is exactly similar to the case of Peer *v.* Dixon, to which I have just referred your Honor. Continuing the Court said it will be observed the complaint does not set forth any violation of speed by the prosecutor at the time of the accident. It embodies the provisions of the acts as above quoted. We deem the complaint invalid in that it does not set forth in what particulars the prosecutor was at the time of the accident violating the provisions of the act, and on this ground the conviction must be set aside.

I know that the Attorney-General has ofttimes referred to a case decided in the Supreme Court, which he thinks meets this objection, but this case of Lowry against some Dental Board, I think I have that now here; that's the case of 90 law, page 54. There the Court said that the complaint is not defective because it has not defined and specified the time when, place where, and the person upon whom the defendant worked. We don't raise that point here as to time, person, or place where. What we want to know is, how did he violate this act according to their notion. If he diagnosed, what did he do which they say is diagnosing. What facts can they set forth in their complaint. If he treated, how did he treat, and what with, in order to create a violation. We must know all of these things, otherwise we can't meet their claim here. They failed to set that out. We are entitled to know it, and it seems to me that under the decisions of the courts in other summary proceeding cases, until they set forth in their complaint the proper allegation, it cannot be sustained. This is a technical proceeding. I realize it, just as technical as the proceeding under the language of this act. If it does not disclose the facts upon which they base their case, the Court has the right to summarily dismiss it. It's just as technical as a proceeding under the Mechanics' Lien law, and I base my motion upon the fundamental principle of law as enumerated in these other cases, which I certainly feel apply here, because this is just as much a summary pro-

ceeding, admitted to be so by the Medical Board, when they got their act of 1922 passed, and for this reason I move you that the complaint now be dismissed.

The Court: I deny the motion.

Mr. Romine: I take exception.

The Court: Exception granted.

ERMA SPRUCE, sworn for the plaintiff.

Direct examination by Mr. Richman:

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

Q. When? A. March 24, 25, April 1, 2, 9, 10, 12, 15, May 7 and 18, 1926.

Q. Where did you go? A. 120 Carroll Street, Paterson.

Q. On the first visit of March 24th, did you go alone? A. Yes.

Q. Will you describe the place you went? A. It was a big, a large residence, and in a window was a large sign, Electric Treatments, on the left-hand side of the window, in the middle, in large letters.

Mr. Romine: I object to any evidence as to electrical treatments, and move it be stricken out. There is no such charge in the complaint. I move the evidence she has just given as to electrical treatment be stricken out. There is no charge in the complaint as to that.

The Court: It's only a sign.

Mr. Romine: I know, but she's testified about the sign as to electrical treatments. We don't think that is admissible under the form of the complaint. It's immaterial. We

are not charged with anything pertaining to that.

Mr. Richman: If your Honor please, he's charged with the practice of medicine and surgery.

10 Mr. Romine: That's not medicine and surgery.

Mr. Richman: I propose to prove that he did give electrical treatments, and if I prove that, under the decision of the Supreme Court, electrical treatment is the practice of medicine and surgery within the meaning of this act.

Mr. Romine: There's nothing in Section Eight of the act of 1915 which holds that the
20 use of electrical treatments is a violation of the law. There is nothing in any medical act that they can produce, and I have been through every one, which holds that a person cannot use electrical treatments.

Mr. Richman: The statute says, who shall by any means and methods. If he used electrical treatments, he comes within the act.

Mr. Romine: If they are going to use that term, any other method, then they must un-
30 der these decisions, and especially in the *Peer* v. *Dixon* case, because there it was said in that case—at any other place—and the Court held that you must set out where the place was, if it's a public place. Here they are going to claim in this case there were electrical treatments, and say that is the practice of medicine and surgery, and they don't so charge in the complaint.

Mr. Richman: Don't have to.

40 Mr. Romine: I submit they do. They are

charging us with answering a case of diagnosing, or operation, or a number of other things, and not one word about electrical treatment. Here, let's get down to the cause of it: This defendant is an osteopathic
10 physician, licensed by the State Medical Board under the act of 1913. The act of 1921 under which they are proceeding expressly exempts persons who are osteopaths, and licensed, and the only mention made about electrical treatments in the Law of 1921 is in the provision for exemption. The act of 1921, Section Nine, admits the exceptions, who shall be exempted from the act to be practicing medicine and surgery, and
20 it starts out with surgeons in the army, or with foreign physicians who come here temporarily to handle cases, and then it goes on to say, or to anyone while actually serving as a member of the resident medical staff of any legally incorporated charitable or municipal hospital or asylum; or to the practice of osteopathy as defined in an act to regulate the practice of osteopathy in the State of New Jersey and to license osteo-
30 pathic physicians to practice in this State and punish persons violating the provisions thereof, approved April 2, 1913, or any act supplementary thereto and amendatory thereof, by any person duly licensed to practice osteopathy in accordance with the provisions of the act last mentioned, and any act supplementary thereto or amendatory thereof; and then it goes on to state, provided said right or title was obtained upon
40 a duly registered diploma, and then it goes on to say the giving of treatment by elec-

tricity by any person, resident in this State, who has been continually engaged in giving treatment by electricity herein during the past fourteen years, meaning thereby that if the person charged does not hold a license as a physician and surgeon, or as an osteopath, or any of the others they have enumerated, holds no license whatsoever, but is practicing the art of giving electrical treatments, and has been doing so for fourteen years prior to this act, that then he is exempt, and it goes on to show that persons who are graduates from a legally incorporated electro-therapeutic school, they are exempt, and then it goes on, any nurse or electrician, while operating in each particular case under the special direction of a regularly licensed physician; so that this man, being a licensed osteopathic physician, would have the right to have someone under him give electrical treatments, provided he was there. There's nothing in the act which comes out flatfooted and says any one of these people, medical men, or osteopaths, or chiropractors, or any of the others, who uses electrical treatments, is violating the law, but merely in that exception, it refers to the use of electrical treatments, and says that those who have a diploma, or those who have practiced the art, are immune from violating this act. This man is an osteopathic physician, licensed, who has practiced fourteen years the art of the use of electricity before this act was put through, has all the diplomas from a school way back in 1910. We might just as well stop right here, if that is what the case is.

The Court: That's a matter of defense.

Mr. Romine: I realize it, but I submit, going back to the point in question, that they have no right to introduce any evidence relating to the use of electricity under this particular complaint, because they haven't alleged it in any sense of the word. For instance, if we want to get back to the form of the complaint in that regard, we have, under the case of—

The Court: I have already ruled on that. The Court can't see any objection to the testimony as to what the signs said. Let it stand.

Mr. Romine: Take an exception.

By Mr. Richman:

Q. Proceed. Tell us what you saw? A. In large letters was Doctor DeYoung, and in smaller letters, very much smaller, was Osteopathic Physician and Surgeon, and office hours, and on the right-hand side in large letters was Dr. DeYoung, and beneath the bay window in large letters was Dr. DeYoung's Health Office, and a sign hanging over the porch, Dr. DeYoung.

Q. You went inside? A. Yes.

Q. Of course, you could see these signs you have testified to from the street? A. Yes.

Q. You went inside. What was it like in there? A. The first room was a reception room, and the next to that in the rear was Dr. DeYoung's office, and he had a desk, scales and a chair in there. Upstairs in one of the rooms he took me was a large electric instrument, and across the room was a smaller electric instrument with a frame in front of that, and on the same floor in the front of the

house was about four booths, and in each booth was some kind of an electric machine.

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

Q. What did you tell him, and what did he say to you?

By Mr. Romine: I object to that as a compound question. Ask what she told him first, so that I may have a chance to object to the other question.

Mr. Richman: That's the way I did ask it.

The Court: The question will be allowed.

A. I asked if he were Dr. DeYoung. He said he was, and he took me in his office and he asked me what my trouble was, and I told him I had pain in my stomach after eating, and he asked me if I were constipated, and he told me that the ascending colon may not be working, and that the food lay there and caused pain and gas. He told me when I went home to take the juice of two sour oranges, or rhubarb and soda, and not to eat any dinner that night, or the next morning not to eat any breakfast, and he said when you come tomorrow morning at nine o'clock I will give you a glass of buttermilk and use the fleuroscope on you. He said after you drink this buttermilk, through this fleuroscope you can see the outline of your stomach, and he said I will be able to tell whether you lack pepsin, or gastric juice, or what you lack, and he told me I had auto-intoxication and gas.

Q. That was on your first visit? A. Yes.

Q. Did you pay him anything on that visit? A. No.

Q. Who else was present? A. No one at that time.

Q. You returned? A. Yes.

Q. What date did you return? A. March 25th.

Q. 1926? A. Yes.

Q. Whom did you see? A. I saw Dr. DeYoung.

Q. What happened? A. I went in with Mrs. Wheeler, and Dr. DeYoung told the nurse to give me a glass of buttermilk, and I drank that, and then he took me upstairs in a large room with this electric instrument, and he told me to stand in front of an electric machine that had a frame in front of it, and I stood between the frame and the machine, and Dr. DeYoung was across the room beside another electric machine, and he turned the lights out, and then he turned the current on that machine.

Mr. Romine: If the Court please, we want to object to this testimony. We want to object to any testimony with regard to the use of electrical instruments, and have it entered on the record.

The Court: The Court allows the testimony over objections.

A. (Continued.) And it threw strong rays across the room and focussed on that frame, and Dr. DeYoung came over and sat down in front of me, and he said I can see all the organs in your body.

Q. What position were you in, standing? A. Standing between the machine and the frame.

Q. Were you dressed? A. No, I had my corset off.

Q. Partly disrobed? A. Yes. He said your heart is overworked from overweight, and he said your liver is enlarged, and your stomach is dilated slightly, and then he told me I should get dressed, and he told me to come downstairs, and I went

downstairs. He took my blood pressure, and he said it was very low, 108-78, and he said that shows your vitality is very low, and he told me the next time I came to bring a specimen of urine, and after that was analyzed he could tell me what treatment I should start. I paid him two dollars.

Q. What was the taking of your blood pressure like? A. He wrapped something around my arm, and he pumped air, and a dial went around to a certain degree on the dial.

Q. Anything else on that visit? A. I paid him.

Q. You paid him on that visit? A. Yes, two dollars.

Q. You returned? A. Yes.

Q. On what day? A. First of April.

Q. Did you see him on that visit? A. Yes.

Q. What happened? A. I handed him the specimen of urine, and he told me to come back the next day and he would give me a report on it.

Q. That's all that happened that day? A. Yes.

Q. You did return the next day? A. Yes.

Q. Did you see him? A. Yes.

Q. What happened? A. He gave me this report, and he told me my urine was full of urea, and that that would lead to uric acid, and if I didn't have it attended to it would lead to kidney trouble. My specific gravity is not normal. He said it was full of mucous, and to east less cheese and meat, that was causing the mucous. I must have treatment every day for a week, and then after that, two or three times a week, and I paid him three dollars.

Q. You say he gave you this report? A. Yes.

Mr. Richman: I offer it in evidence.

By Mr. Romine:

Q. This was sent away to the laboratory for chemical analysis? A. I don't know.

Q. You knew where that was going to go, didn't you? A. I didn't know where it was going.

Q. You don't know who made this analysis of the urine, do you? A. I don't.

Mr. Romine: Then I object to it.

Mr. Richman: She got it there. I offer in evidence a report handed by the defendant to the witness as a report of the analysis of her urine.

Mr. Romine: We don't want to have it in evidence as binding us.

Mr. Richman: He gave it to her.

Mr. Romine: We admit that. We have the right to give it to her.

The Court: It will be admitted.

Q. On that visit did he give you anything else? A. No.

Q. Did you pay him on that visit? A. I paid him three dollars.

Q. Was there any arrangement made for your return, or not? A. Yes, he told me to return.

Q. When? A. I returned the ninth of April.

Q. What happened on that visit? A. Dr. DeYoung told me, he asked me how I felt, and I said I didn't feel any different. He said that I had inflammation of the bladder, and excessive urea and mucous, and I should take these electric treatments, and he gave me a card, and he wrote something on the card and told me to give the card to the nurse upstairs. I handed it to the nurse and the nurse told me to undress, and she told me to get on the table, and she put a strong light over me. She called it a deep therapy lamp.

Mr. Romine: Objected to, and I ask that it be stricken out.

The Court: Yes, ordered stricken out.

By Mr. Richman:

Q. What did she do? A. She put a strong light over me.

Mr. Romine: We object to anything done by some other party, some other girl who she terms nurse.

Mr. Richman: She was directed to go to the nurse by the doctor with a card.

The Court: It will be allowed.

Mr. Romine: I ask for an exception.

By Mr. Richman:

Q. What did she do? A. I lay on my back and she put a lamp all over me. She told me to turn over and she put the lamp on—

Mr. Romine: I object to what she said.

The Court: Tell what she did.

A. She put the lamp on me for about fifteen minutes, and she took me in another room and put another kind of lamp on me, and put glasses on me and a black cloth over my face.

Q. Anything else? A. I went downstairs. The doctor gave me this card, and I paid him five dollars. He told me to bring it with me when I came, and he gave me this diet.

Q. Did you have any further conversation with him when you came downstairs? A. About dieting. He told me to stick to that diet for three weeks.

Q. Anything said about the treatment? A. He told me I should take several of them.

Q. What became of the card you handed to the nurse? A. The nurse kept it.

Q. Did you notice what it said on the card? A.

It was printed on, deep therapy lamp, and written alongside that was fifteen minutes.

Q. Anything else? A. Something about another lamp.

The Court: The card is the best evidence.

Mr. Romine: I ask that it be stricken out.

The Court: It will be stricken out.

By Mr. Richman:

Q. Do you know who wrote on this card? A. Dr. DeYoung.

Q. In your presence? A. Yes, on that side of it, and the dates the—

Q. He handed the card to you? A. He wrote my name on it, and the ten dollars receipted there.

Q. And also the defendant handed you this diet? A. Yes.

Mr. Richman: I offer it in evidence.

Mr. Romine: We have no objection.

By Mr. Richman:

Q. That concluded your visit of April 9th? A. Yes.

Q. You returned after that ? A. April 10th.

Q. Next day? A. Yes.

Q. What happened? A. I returned with Mrs. Hess, and Dr. DeYoung gave me a card to give to the nurse, and I went upstairs and gave it to the nurse, and she told me to go in this room and undress and lay on the table, and she put this strong light on me.

Mr. Romine: I object to what she told her to do.

The Court: Say just what she did.

Mr. Romine: I ask that it be stricken out.

The Court: What she said will be stricken out.

By Mr. Richman:

Q. Tell what happened? A. She put this lamp over me for about fifteen minutes. She took me in another room, and put another lamp over me, and she put glasses on me and a black cloth over my face. Then she took me in another room, and put a pad under me and a pad over me, and over that pad she put something that looked like a sand-bag, connected to an electric machine. She turned that on, and there was a very severe pulling sensation in the abdomen. Then I went downstairs, and while I was in this last room Dr. DeYoung came in and asked me how I was, how I was getting along.

Q. What was happening when he asked you how you were? A. This electric machine was on me.

Q. Did he come into the room where you were? A. Yes. Then I went downstairs and he had a conversation with Mrs. Hess.

Q. In your presence? A. Yes.

Q. Did you pay him on that visit? A. No.

Q. You returned after that? A. April 12th.

Q. Yes, and what happened on that visit? A. Dr. DeYoung asked me how I felt, gave me a card to give to the nurse, and I got on the table and the nurse put a large lamp over me for about fifteen minutes, went into another room and she put another lamp over me, went into a third room and she put a pad under me and one over me, and a thing that looked like a sand-bag on top of that pad, connected it with the electric machine, and

turned the current on. That was for about five or ten minutes.

Q. Did Dr. DeYoung come in while you were being treated? A. Not that day.

Q. Did you see him on your way out? A. Yes.

Q. Anything said? A. He told me to come back again.

Q. You did go back on the 15th? A. Yes.

Q. What happened on that visit? A. I went back with Mrs. Orr, and Dr. DeYoung gave me a card to give to the nurse, and the nurse put this strong lamp on me, and took me in another room and put another lamp on me, took me in another room, put a pad under me and a pad over me, put the sand-bag over that, connected ti with the electric machine, turned the current on, and there was a severe pulling, and then I went downstairs, and Dr. DeYoung discussed the treatment for Mrs. Orr.

Q. And then you left? A. Yes.

Q. You returned again on May 7th, as I understand? A. Yes.

Q. And what happened on that visit? A. Dr. DeYoung took me upstairs, and told me to get ready for the treatment, and he told me to get on the table, and he put a very strong light over me.

Q. What was that like? A. It was a huge lamp that threw very strong rays, and caused severe heat. First I was on my back and then on my abdomen.

Q. What was the color of the light? A. The same as an electric light.

Q. All right, continue, tell us what else happened? A. Then he took me in another room, and told me to put these glasses on, and put the black cloth over my face, and used the lamp on me for about four minutes.

Q. Was that another kind of lamp? A. Yes.

Q. What was that like? A. Looked like a large lamp. Threw a white light that was very strong to the eyes, you could not stand it with nothing on your eyes.

10 Q. Were you dressed when these lamps were applied? A. Just my combinations.

Q. And in what position were you? A. Lying on my back part of the time, and part of the time on my abdomen. Dr. DeYoung told me I had no organic trouble, it was my digestion.

Q. What else did he say? A. He told me to come back, and I paid him five dollars, and he marked that amount on the card that I paid him.

Q. On Exhibit P-2? A. Yes.

20 Q. That was on May 7th? A. Yes.

Q. You returned after that? A. May 18th.

Q. What happened? A. May 7th he gave Mrs. Orr a fleuroscope examination.

Q. In your presence? A. Yes.

Q. The same kind of examination you had? A. Yes, and on May 18th the doctor gave me a card to take up to the nurse, and she put the strong light on me, took me in another room and put another light on me, took me in another room, and put

30 one pad over me and another under me, put this bag on top, connected it up and turned on the current. I got dressed and went downstairs. Dr. DeYoung asked me how my ear was. I had trouble with it.

Q. Did he say anything to you after that? A. No. He told me to come back, and he gave me these cards.

Q. On that visit? A. Yes.

40 Q. That's the May 18th visit? A. Yes.

Mr. Richman: I offer both cards in evidence.

Q. You returned after May 18th, did you not? A. No.

Q. That was your last visit? A. Yes.

10 Q. Did you have any conversation with the defendant any time during these visits as to the effect of these treatments? A. He told me it would help me if I took enough of these treatments.

Q. You did take a sample of urine to him ? A. I did.

Q. You spoke of some pad. What was that treatment like that the doctor gave you? A. He put me in this room, put a pad under me and a pad over me.

20 Q. Do you know what the pad was like? What kind of material? A. It really looked like asbestos, but I don't know what it was.

Q. One pad under you and one pad over you? A. On top of the pad over me the thing he put on looked like a sand-bag, attached to an electric machine Dr. DeYoung called a Morse Wave Generator.

Q. What was that like, when you were in that position? A. He turned the lever on that machine,

30 and you could feel a terrible pulling in your obdomen.

Q. When you took the glass of buttermilk to drink, Dr. DeYoung was present? A. Yes.

Q. Did he tell you to drink it or not? A. Yes.

Q. Who handed it to you? A. The nurse.

Q. In his presence? A. Yes.

Q. When he handed you the diet did he say anything? A. The diet?

40 Q. Yes? A. He told me to stick to that diet for three weeks.

Cross examination by Mr. MacLeod:

Q. Your name is Miss Spruce? A. Yes.

Q. Spruce? A. Yes.

Q. That is, your right name is Miss Spruce? A. Yes.

10 Q. You use other names going around investigating for the State Department? A. Yes.

Q. You have used the name of Adams when you went to see Mr. DeYoung? A. Yes.

Q. You use other names besides, too, don't you? A. Yes.

Q. For the purpose of disguising yourself, or put the doctor, or supposed doctor, off his guard, is that the reason you did it? A. Yes.

20 Q. You make many investigations, don't you? A. Quite a few.

Q. During the months of March, April, May, June, July, August and September, you made a great many in 1926, didn't you? A. Quite a few.

Q. During that time you were making all other doctors, or chiropractors, or osteopaths, drug stores, or other investigations, you were working on them during that time also? A. Yes.

Q. Dr. DeYoung's was not the only case you 30 were working on at that time, was it? A. No.

Q. I suppose you have a memorandum, that you put these things down in a book? A. I have reports to make out.

Q. Do you keep memorandums in your own book. A. No.

Q. Don't you keep a separate book for your own purpose and use? A. No, I make reports.

Q. Are the reports made out on one sheet, or made out daily on separate sheets? A. I don't 40 quite know what you mean.

Q. If you went to see Dr. DeYoung today, would

you report to your Department that you had been there today and what you found, on a separate sheet of paper? A. Yes.

Q. So that each time you went there you had a separate report filed, did you? A. Yes.

Q. All these reports are filed with the State? A. Yes. 10

Q. Have you got them here today? A. Yes.

Q. Got them all with you? A. Yes.

Q. Every one of them each day? A. Are you referring to Dr. DeYoung?

Q. Yes? A. Yes.

Q. When did you look at them last? A. Today.

Q. For the first time since you made the reports? You said when you looked at them last, is that the first time you have looked at them since you field them? A. Last night and today. 20

Q. Looked them over to memorize them? A. I refreshed my memory.

Q. Did you memorize the days from your reports last night? A. Yes.

Q. Memorize all the days? A. Yes.

Q. That's why you remember each one distinctly? A. Yes.

Q. Do you have on your report whether you were upstairs, and which rooms you went in? A. I know which rooms I— 30

The Court: Strike out, not responsive.

Q. Did you put on your report which room you went in, and whether you went upstairs, or stayed downstairs? A. I think on some of them I have upstairs.

Q. Will you refer to your reports, and show me any reports on which you state you went upstairs? Do you remember when it was that your report says you went upstairs? A. March 25th. 40

Q. Is that the only day you went upstairs? A. I went upstairs most every day.

Q. Don't you know as a matter of fact you didn't go upstairs on March 25th, the first day you were there? A. That was not the first day I was there. 10 I went March 24th.

Q. On March 25th don't you know you didn't go upstairs? A. I know I did go upstairs.

Q. Would you have put it on your report if you did? A. I don't always put it on my report, it does on that one, on the 27th.

Q. I show you March 25th. There isn't any report of it there. A. The first day I went upstairs.

Q. Didn't you on direct examination say you went upstairs the first day you were there? A. 20 No, I didn't.

Q. Are you sure of that? A. Absolutely sure.

Q. You recall when Dr. DeYoung gave the nurse buttermilk, you said, didn't you? A. I said that.

Q. How many glasses did he give you, one or two? A. Just one.

Q. Only one he gave you? A. Yes.

Q. Only one glass of buttermilk you remember emptying? A. Yes.

Q. That was given you by Dr. DeYoung. You 30 mean the nurse? A. He told the nurse to give it to me.

Q. He told the nurse to give it to you. You didn't have that on your report, did you? A. I don't know whether I had it or not, but I remember that.

Q. That was on March 27th, wasn't it? A. I was not there March 27th.

Q. I beg your pardon, March 25th? A. March 25th I had buttermilk.

40 Q. Your report don't show the doctor told the nurse to do it, does it? A. Doesn't it?

Q. Does it? A. The nurse gave the buttermilk.

Q. Does your report show all that the doctor told you to do, as you have told here today? A. I could not put every word on the report.

Q. So that all the things you have told us what the doctor told you are not on the report, are 10 they? A. Not every one.

Q. Are any of them on that the doctor told you? A. Yes.

Q. Show us one, point it out? A. What are you referring to?

Q. Take the one of March 24th when you first went there, and the doctor told you these things? A. What it was he told me?

Q. Do you remember what you said on direct examination Dr. DeYoung told you about your 20 condition? A. Yes, here it is in my report.

Q. Is it all there? A. Yes.

Q. You memorized all these things last night, did you? A. I refreshed my memory.

Q. Refreshed your memory. These machines, you called them electric machines, what did they do, throw a light? A. Yes, the one that the doctor was standing by threw strong rays on the machine I was standing in front of.

Q. Just threw rays, did it? A. Yes. 30

Q. There was no other treatment that Dr. DeYoung gave you at his place except what you have already described, is that so? A. May 7th he gave me a treatment, May 18th too, May 18th also.

Q. That treatment you received May 7th. There is no other treatment except what you have already described, was there? A. Right.

Q. He didn't give you any medicine of any kind? A. No.

Q. He prescribed no medicine of any kind for 40 you? A. Gave me a diet he told me to follow.

Mr. MacLeod: I ask that be stricken out.
The Court: It will be stricken.

Q. Gave you no drugs or any medicine? A. No.

Q. Gave you no prescription for any medicine? A. No prescription, but he told me to take rhubarb and soda.

Mr. MacLeod: I ask that be stricken out.
The Court: Stricken out.

Q. He didn't give you any drugs? A. No.

Q. He performed no surgical operation upon you of any kind? A. No.

Mr. MacLeod: That's all. No further questions.

FAUSTINA HESS, sworn for the plaintiff.

Direct examination by Mr. Richman:

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

Q. When? A. April 10th.

Q. What year? A. 1926.

Q. Where did you go? A. 120 Carroll Street, Paterson.

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

Q. Whom did you go with? A. Miss Spruce.

Q. What did you say to the defendant, if anything? A. I told him that I had had the flu, and felt very tired, and was without pep, and weak. I was having considerable trouble with my stomach, and he asked me if I was still coughing very badly, and I told him no, and he told me I should take lemons and make lemonade and drink a quantity of that just as much as I could drink

of it, and he went on to explain how that would help me.

Q. What did he say about it, do you remember? A. I don't remember just all he said. Anyway, that it would give me relief for my condition.

Q. He said it would? A. Yes.

Q. Were you present when Miss Spruce was being treated? A. Yes, I was.

Q. Where were you? A. I was upstairs with her.

Q. Was Dr. DeYoung present? A. Not on that occasion, just the nurse.

Q. He came in afterwards, didn't he? A. He came in afterwards.

Q. After the treatment had been given? A. Yes.

Mr. Romine: That calls for a conclusion, and ask that it be stricken out.
The Court: Very leading.

Q. Did you pay him? A. No.

Q. What else happened as far as you are concerned? A. That was all.

Cross examination by Mr. MacLeod:

Mr. MacLeod: No questions.

MADELINE BURGY, sworn for the plaintiff.

Direct examination by Mr. Richman:

Q. Where do you live? A. 670 Market Street.

Q. Passaic? A. No, Paterson.

Q. Have you visited the defendant in this case, Dr. DeYoung? A. I was up to see Dr. DeYoung.

Q. When did you go? A. In March.

Q. Of this year? A. Yes.

Q. You remember where you went? A. I went in the door, and in the office. He took me in the office.

Q. Did you see him on that visit? A. I told Dr. DeYoung what—

10 Q. What was the trouble? A. I had backache. I told him I got a backache.

Q. What did he say to you? A. He said, he took me upstairs. The nurse was there and put me in a room.

Q. Who did? A. The nurse.

Q. Was the doctor there? A. No, not there when I went upstairs. The nurse was there, and she put me on a table with a lamp over it.

Q. What did the doctor tell you to do? A. The 20 doctor told me to go upstairs.

Q. What for? A. For my backache.

Q. Did he say anything to the nurse in your presence? A. Told the nurse to put the light on me.

Q. What else? A. The nurse put me on the table, and put a light over it.

Q. What did he say to the nurse about the light? A. I didn't listen, because I was there and I left it to them.

30 Q. What happened? A. The nurse put me on a table, put some glasses on, and put the light over my back, that's all.

Q. What else happened? A. Then when that was done he come up and massaged me over.

Q. The doctor? A. Yes.

Q. How did he do that? A. I was on my back. I don't know how he done the massaging.

Q. What with, his hands? A. I suppose so. I was on the table.

40 Q. Did you go back again after that visit? A. A

couple of times I went back there again, then I felt all right and I stayed away.

Q. What happened when you went back? A. The same thing, the same treatment.

Q. Did you see Dr. DeYoung? A. I went upstairs. 10

Q. Was he upstairs? A. Every time he massaged me.

Q. Where was he when you were receiving the treatment? A. He was downstairs. I went in and went upstairs.

Q. Whom did you pay? A. Three dollars.

Q. Who did you pay it to? A. I left that downstairs.

Q. With whom? A. With the doctor.

Q. On the first visit, how did you come to go upstairs? A. I asked if the doctor was there, and went in his office, and then he took me upstairs. 20

Q. He took you upstairs? A. I went upstairs.

Q. He went with you? A. No. He told me to go upstairs. He told the nurse what I have to do, what ailed me.

Q. And then what did he tell the nurse to do. Did you hear it? A. I didn't hear it. I told him I had backache, a pain in my back.

Q. Is that what happened each time you went? A. That's all I ever had, treatment for my back. 30

Q. Each time you went he sent you upstairs? A. Yes, I went upstairs.

Q. Did Dr. DeYoung send you upstairs? A. Sure, he sent me upstairs every time. I went upstairs every time I went there.

Cross examination by Mr. MacLeod:

Q. You went there how many times? A. About five or six times. 40

Q. Did you get relief? A. I left fine. I would not have been there if I had not had relief.

Q. I suppose this light they used that was used on your back was something sort of to warm the body, wasn't it? A. I felt heat on my back.

10 Q. Then after that was on for a certain length of time he used his hands presumably to massage and rub the muscles of the back, and that happened each time? A. Each time I went in.

Q. That was all he ever did? A. That's all I ever had done.

Q. He never gave you no medicine or drugs? A. He never gave me no medicine.

Q. Never performed any operation? A. No.

Mr. MacLeod: That's all.

20

CHRISTINA VALLE, sworn for the plaintiff.

Direct examination by Mr. Richman:

Q. Where do you live? A. Hawthorne, 38 Washington Avenue.

Q. Do you know Dr. DeYoung? A. I do.

Q. Have you been to see him? A. I have.

Q. When did you go? A. I went the beginning of the year. I just don't remember.

30 Q. Of this year? A. Yes.

Q. What was your trouble? A. I was subject to epileptic fits.

Q. Did you tell him that? A. He told me they could not be cured. I tried so many medical doctors, I thought I would try this one, too.

Q. What did he say to you, and what did he do? A. He said that he thought he could help me, and he did.

40 Q. What did he do? A. I just remember going under some of these treatments, that's all.

Q. Who gave them to you? A. The nurse.

Q. How did she come to give them to you? A. The doctor told her about it?

Q. In your presence? A. Yes.

Q. How many treatments did you take in that way? A. That I could not remember, because this was long ago. I don't remember. 10

Q. How many times were you there, about? A. I don't know. I guess I must have went about ten or twelve times, something like that. I don't really remember, it was so long ago.

Q. You paid him, of course? A. I did.

Cross examination by Mr. MacLeod:

Q. He never gave you any drugs? A. No, he never. 20

Q. Never performed any surgical operation on you? A. No.

Q. Just used his hands? A. Yes.

Mr. MacLeod: That's all.

By Mr. Richman:

Q. He didn't use his hands on you, did he? A. Not that I remember, because this was long ago.

Q. You got electrical treatment, didn't you? 30

The Court: That's what she testified to. It's very leading.

A. I tried so many medical doctors—

Q. Just what was done to you in Dr. DeYoung's place. What was the treatment like? A. I told him what was the matter, and then he just told, he says it's a thing that can't be cured, and I may help you, he says.

Q. What was that? A. I remember going up- 40

stairs, some electric treatments, that's all. That's all I can remember.

Mr. MacLeod: No further questions.

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10 DELIA ORR, sworn for the plaintiff.

Direct examination by Mr. Richman:

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

Q. On what date? A. April 13, May 7, 1926.

Q. You say April 13 and May 7. That's correct, is it? A. Yes.

Q. On April 15th, where did you go? A. 120 Carroll Street, Paterson.

20 Q. Who did you go with? A. Miss Spruce.

Q. Did you see the defendant? A. I did.

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

Q. About yourself? A. Yes.

Q. What did you say to him? A. I told him I was having trouble with my stomach, such a trembling sensation in my stomach, and he said well he could not do anything for that until he made an examination with the lights, so I made an appointment with him to go back, and he said that 30 when I did come back not to eat anything in the morning until after I had come in and he had used the lights on my stomach. That day the doctor treated Miss Spruce, and then I returned again on May 7th.

Q. What happened then? A. He had me go upstairs, and had the nurse give me a glass of bismuth.

Q. Was he present when that was taken? A. He 40 was up there, and he told the nurse to give me bismuth. When he told me before he said he was

going to give me buttermilk, but he had no buttermilk that day, so I would have to have bismuth, and so I did, and then they had me undress to the waist, and there was a large machine in back of me, and like a frame in the front, and over, I think it was over to the left was a big bright light, 10 and that threw reflections on this thing that he came up and looked through.

Q. Did he come up and look through? A. He was right in front of me, and he looked through, and he said I had a fallen stomach, and that it was four inches below normal, and that it should not be neglected, that I should take care of it, and he also said that I breathed more with one lung than I did with the other, and that he could see my heart beating, and he let Miss Spruce look through 20 it and she saw the same thing.

Q. Then what happened? A. I didn't go back again. He said I should take this treatment, and—

Q. What treatment? A. He would bring the stomach back into its normal condition.

Q. What treatment did he mean, do you know? A. Electric treatment.

Mr. Romine: I ask that be stricken. She didn't say he said that. 30

Q. Did he say that? A. He said electric treatment would bring the stomach back to its normal condition.

Q. Did you pay him? A. I paid him two dollars.

Q. Did you return after that? A. No.

Cross examination by Mr. MacLeod:

Q. You never went back to this so-called electric treatment? A. No, sir.

Q. You never got electrical treatment there, did 40 you? A. No.

Q. You are still investigating, are you not? A. Yes.

Q. You were paid to go out and get evidence against Dr. DeYoung in this case to show he was violating Section Ten of the medical act? A. I go out to see what they are doing.

Q. Weren't you paid to go out and get evidence? A. I was paid to go out and see what he was doing.

Q. That's getting evidence, isn't it? A. If you so care to term it.

Q. Do you term is that, or don't you?

> Mr. Richman: She's testified she went out to see what he was doing.

Q. I am asking if you term it evidence. A. I presume you would. I went to see what he was doing.

Q. Was there anything wrong with your stomach? A. Yes.

Q. There was really. You asked him about it for him to treat you, and never went back and got any treatment for it, did you? A. No.

Q. Miss Spruce did look through this fleuroscope, did she? A. She did.

Q. You said she saw the same thing the doctor did? A. The doctor told her the condition, and she said, oh, yes, I see it.

Q. You saw it then? A. He drew her attention to the lungs, that I did not breathe as—

Q. She saw one lung breathing more than the other? A. That's what she said.

Mr. MacLeod: That's all.

Mr. Richman: I offer in evidence the record of the conviction in this Court of the defendant on the 7th of January, 1925, for violation of Section Ten of this act, and ask that it be marked.

The Court: It will be.

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

Mr. Romine: We object to that. Under the act under which this certificate is entitled to be offered, it should show whether or not he is licensed to practice in any of the branches of medicine and surgery. He is, as a matter of fact, licensed to practice osteopathy, and that is a matter of record in that office.

The Court: Doesn't the record show? I don't see why the State would want to conceal anything.

Mr. Richman: This certificate says, and we charge him with, the practice of medicine and surgery.

The Court: It seems to me the State should not want to conceal anything. If he is licensed as an osteopath or a chiropractor it should disclose it. Don't you think so?

Mr. Richman: We have no objection to the proof of that.

The Court: It will be admitted then.

Mr. Romine: That is not proper evidence. We should have the whole record.

Mr. Richman: This is made evidential under the act of 1924.

The Court: It's admitted he's a licensed osteopath?

Mr. Richman: It's admitted he's a licensed osteopath.

Mr. Richman: State rests.

Mr. Romine: If the Court please, I want to move for a dismissal in this case. There isn't any evidence now that the defendant practiced medi-

cine and surgery in the term in which it is ordinarily used. He didn't give any drugs, didn't perform any surgical operations. It does appear that he practiced a science known as osteopathy, and it appears from their admission that he is an osteopath, so that under the provisions of the act osteopaths are exempt from any possible violation of the medical act. If your Honor will refer to the Laws of 1921, I will submit a copy of them. Beginning at page 706, Section Nine of the act, of which this act is amendatory, it says the same is hereby amended so it shall read as follows: The prohibitory provisions of this act as amended shall not apply to commissioned surgeons of the United States army, navy, or marine hospital service, and so on, and then you come over to page 707, or to the practice of osteopathy as defined in an act entitled "An act to regulate the practice of osteopathy in the State of New Jersey," and he is a licensed osteopathic physician in this State. In other words, anybody who holds a license to practice osteopathy cannot be amenable to the provisions of this act, or any penalty thereunder. I quite agree with the Aattorney-General that there are cases on record where people who do not comply with the examination provisions of this act, who do not hold a license as a chiropractor, or an osteopath, or who do not hold a diploma from a recognized therapeutic school, or who have not for fourteen years prior to the act of 1921 practiced electro-therapeutics. There are cases where people outside of that class have been termed to be practicing medicine and surgery when they used electricity for the treatment and cure of disease, pain, injury, or physical deformity. There are cases I think they have had up, even to the

Supreme Court, where some individual was using electricity, who could not comply with the examination provisions of this act, and the Supreme Court went so far in these given cases as to hold that they were, by implication, practicing medicine and surgery under the broad provisions of section eight of the Laws of 1915. But here, where you have expressly, osteopathy, taken from the act itself, they have the right, as osteopathic physicians, to use electricity, or any other method known to the profession, which is not the giving of medicine or drugs or the performance of an operation. These lights that they use are merely adjuncts to their profession. They are used sometimes to help them diagnose, they are used sometimes to warm the muscles of the body so that their massage treatment may take effect more readily. They have undoubtedly the right to do this, and under the Legislature of this State they are licensed to practice osteopathy, and could not be chargeable nor affected under the provisions of the medical act, the same as those who are not licensed to practice medicine and surgery. They are examined by the provisions of the act, because it even goes so far as to say at the end of page 708, in dealing with the last part of that, that anyone is exempt who is using electrical instruments in any good cause under the direction of regularly licensed physicians. The certificate, which is given out by the Medical Board of the State of New Jersey licenses these people as osteopathic physicians, and the word there is disjunctive. It differentiates between licensed physicians and surgeons in the classification, because not only the medical physician, the chiropractic physician, and the osteopathic physician, he is exempt from the provi-

sions of the act by the preceding clause; also there is the further exemption in the section with regard to the use of these electrical appliances. As I view it there could not possibly be any conviction in this case.

10 Mr. Richman: If your Honor please, the Legislature has defined what osteopathy is, and what he can do as an osteopathic physician. It is limited under the statute, and the act approved April 2, 1923, chapter 217. For the purpose of this act the practice of osteopathy is defined as follows: "A method or system of healing whereby displaced structures of the body are replaced in such a manner by the hand or hands of the operator that the constituent elements of the diseased body may re-

20 associate themselves for the cure of the disease." Now, he may use his hands, he may use his hands only. Here the undisputed evidence is that he went beyond that. He treated by the method of electrical treatments, and our courts have held that the electrical treatments given for a physical disability, illness, injury, come within the definition of the practice of medicine in this State. He so undertook by his own method to treat a physical condition, and the Supreme Court, in the State

30 *v.* Lezenby, held in that case specifically that there the defendant gave electrical treatments for the treatment of human disease, and the Court held that that was practicing medicine.

The Court: In that case was the defendant a registered osteopath?

Mr. Richman: He was not.

The Court: I think that alters the case.

Mr. Richman: Here is a man entitled to do as

40 an osteopath what the statute says he can, by the

use of his hands only. In this case he went beyond that. He used electrical treatments as the witnesses have testified to. That he cannot do as an osteopath, and if he does it as an osteopath he violates the act to regulate the practice of medicine

10 and surgery, because the Supreme Court has held that is practicing medicine in violation of this very statute.

The Court: I agree with you that the use of electrical appliances is practicing medicine without obtaining a license, but the Court feels this man is licensed, that he has the right to use this method of treatment, and thinks that the State goes very far when it tries to bring a licensed

20 osteopath, or chiropractor, under provisions of this act.

The complaint will be dismissed.

Mr. Richman: Allow me an exception.

The Court: Exception allowed.

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Reasons.

NEW JERSEY SUPREME COURT.

STATE BOARD OF MEDICAL EXAMINERS OF NEW JERSEY, *Plaintiff-Plaintiff in Certiorari,* v. COMETIS DEYOUNG, *Defendant-Defendant in Certiorari.*	

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

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1. The Court erroneously found the defendant not guilty.

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

3. The Court, under the evidence, should have found the defendant guilty as charged.

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

Respectfully,

EDWARD L. KATZENBACH,
Attorney-General,
Attorney for State Board of Medical Examiners of New Jersey.

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Opinion of Supreme Court.

NEW JERSEY SUPREME COURT.

STATE BOARD OF MEDICAL EXAMINERS OF NEW JERSEY, *Prosecutor,* v. COMETIS DEYOUNG, *Respondent.*	No. 206. October Term, 1927.

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Submitted October 14th, 1927; decided January 27th, 1928.

On writ of certiorari.

Before Justices TRENCHARD, KALISCH and KATZENBACH.

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For the Presecutor: Edward L. Katzenbach, Attorney General, and Grover C. Richman, Esq.

For the Respondent: Elmer W. Romine, Esq., and Alexander MacLeod, Esq.

Per Curiam:

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This case is before this Court by the allowance of a writ of certiorari directed to the District Court of the City of Passaic. The writ brings up for review proceedings instituted by the State Board of Medical Examiners of New Jersey against Cometis De Young for a violation of Section 10 of the Act 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 22nd, 1894. This Section was amended by Chapter 271 of the

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Laws of 1915 and Chapter 221 of the Laws of 1921. It provides that any person practicing medicine and surgery without first having obtained and filed the license provided by the act shall be liable to a penalty of $200. The suit in the instant case was for $500 as De Young had been previously found guilty of the same offense and for a second offense, if guilty, the Act makes a penalty $500.

The complaint was made by a member of the State Board of Medical Examiners. It alleged that Cometis De Young had violated said Section 10. The usual warrant was issued on the complaint. A trial was had before the Passaic District Court. It was admitted that De Young was a duly licensed osteopathic physician. Those who were sworn in behalf of the State Board testified that De Young had a large residence. In the window there was displayed a sign reading "Electric Treatments." In large letters appeared the words "Doctor De Young." In smaller letters appeared the words "Osteopathic Physician and Surgeon." There was also another sign reading "Dr. De Young." A sign reading "Dr. De Young's Health Office" was placed under the bay window of the residence. A sign hung over the porch reading "Dr. De Young." The testimony of one witness was to the effect that when she called, De Young asked her what her trouble was. She told him she had a pain in her stomach after eating. He asked if she was constipated, and when she told she was he said the ascending colon might not be working and that the food lay there and caused pain and gas. De Young told the witness when she went home to take the juice of two sour oranges, rhubarb and soda, and to eat no dinner and no breakfast, and to come to his office in the morning at 9 o'clock, when he would give

her a glass of buttermilk and use the fleuroscope on her. The witness returned in the morning at the appointed time. De Young took her upstairs in a large room where there was an electric instrument. She removed some of her clothing and stood in front of the frame. De Young turned the lights out. He then turned the current of an electric machine on. It threw a light so he could see the organs of her body. He said that her heart was overworked, liver enlarged, and stomach dilated. He took her blood pressure and asked for a specimen of her urine, for analysis. He afterwards reported the result of the analysis. Electric treatments were also given her by a nurse under the defendant's direction. Four other witnesses for the State Board testified substantially to the same effect.

At the conclusion of the case the Trial Court dismissed the complaint on the ground that as the defendant was licensed to practice osteopathy he had a right to give electric treatments. The question before us for decision is whether or not an osteopath who gives electric treatments to his patients is violating the Medical Act. In the case of State Board Medical Examiners *v.* Lezenby, 1 Misc. Rep. 20, it was held that the giving of electric treatments was a violation of the State Medical Act. It does not appear in this case as to whether or not Lezenby was an osteopathic physician. The case however is authority to the effect that electric treatments constitute a violation of the Medical Act. We cannot see that under the provisions of the Medical Act it can make any difference by whom the electric treatments are given, if not given by a physician duly licensed to practice medicine and surgery under the Medical Act, approved

May 22nd, 1894, and its amendments and supplements.

The contention of the defendant is that one who obtains a license to practice osteopathy has by the terms of the act (P. L. 1913 p. 388) and its supplements, studied such subjects as would qualify him to give electric treatments. This argument is perhaps persuasive as to why osteopaths should by law be permitted to give electric treatments, but unsound as to their having under the statutes pertaining to the practice of osteopathy the legal right to do so. Under the law the osteopath is limited to his treatment to the manipulation of the human body by hand so as to bring all the parts thereof into the proper position. With reference to the giving of electric treatments we feel that we are controlled by the case of State Board *v.* Lezenby.

There was also evidence that the defendant used the letters "Dr." in connection with his name and in some places upon his residence without qualification. By Section 8 of the Medical Act any person is regarded as practicing medicine and surgery who shall use the letters "Dr." in connection with his name and hold himself 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 method to diagnose, treat, operate or prescribe for any human disease, pain, injury, deformity or physical condition. Under this branch of the case the testimony seems to us to have warranted a conviction, as the defendant did use the letters "Dr." in connection with his name and did offer and undertake by a method to treat a physical condition.

The judgment of the District Court of the City of Passaic is reversed.

Notice of Appeal.

NEW JERSEY SUPREME COURT.

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

v.

COMETIS DEYOUNG,
Respondent-Appellant.

To the State Board of Medical Examiners of New Jersey:

TAKE NOTICE that the above named Cometis De Young appeals to the Court of Errors and Appeals from the judgment in the Supreme Court in favor of the State Board of Medical Examiners for the reason that the Supreme Court committed error in reversing the judgment in favor of Cometis De Young instead of finding in favor of the said Cometis De Young.

ELMER W. ROMINE,
Attorney for Appellant.

New Jersey Court of Errors and Appeals

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

vs.

COMETIS DE YOUNG,
Defendant-Appellant.

BRIEF OF APPELLANT.

Preliminary Statement.

The Medical Board filed complaint in the District Court of the City of Passaic against Cometis De Young, a licensed osteopath, charging that because he held himself out as being able to treat, operate and prescribe for human diseases he had thereby practiced medicine and surgery without a license.

After considering the evidence on motion made in behalf of defendant the District Court dismissed the complaint on the ground that defendant being a licensed osteopath he had a right to use the form of treatment referred to by the evidence.

Upon review by certiorari taken by the Medical Board to the Supreme Court the judgment in favor of Dr. De Young was reversed, the Supreme Court holding that the defendant had no right to use the title of "Doctor," and that the use of electricity in connection with his treatments constituted the practice of medicine and surgery.

It is from this finding of the Supreme Court that appeal has been taken by Dr. De Young.

Facts.

It was admitted that Doctor Cometis De Young, defendant herein, was a duly licensed osteopath of this State (page 43, line 35).

The Medical Board, by its complaint of May 18th, 1926, (page 3) charged that:

> "The said Cometis De Young did commence and continue the practice of medicine and surgery, without first having obtained and filed a license for such practice issued by the State Board of Medical Examiners of New Jersey, as provided for under the provisions of said act, in that the said Cometis De Young did hold himself out as being able to diagnose, treat, operate and prescribe for human diseases, pains and physical conditions and did offer and undertake to treat, operate and prescribe for human diseases, pains, injuries, deformities and physical conditions and did treat and prescribe for the same contrary to and in violation of said section ten of the act."

The complaint was indefinite, merely quoting the language of the statute, without setting forth the facts or acts actually done as constituting the practice of medicine and surgery.

Objection was made at the trial to this form of complaint (pages 9 to 15). Although argued, the Supreme Court did not decide the question.

As an adjunct to the osteopathic treatments and to aid in making diagnosis, Dr. De Young used an electrical apparatus known as a fluoroscope which permitted him to look through the body and visualize the various organs and ascertain with certainty whether they were properly functioning,

and to determine more accurately any disorganizations of the body (page 21).

He also advised his patients as to diet and took blood pressure. He had urinalysis tests made by a laboratory as a further means of diagnosis (pages 22-23).

Ordinary electric lights were used (page 27, line 35) preliminary to massage treatments (page 36, line 33).

The Medical Board because of such, are endeavoring to construe the practice pursued by Dr. De-Young to be that of medicine and surgery.

In fact no drugs or medicines of any kind were given, prescribed or used and no surgical operations performed.

POINTS FOR DISCUSSION.

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

2. Complaint is defective and dismissal should have been sustained.

3. Doctor De Young in his treatments was within his rights as a licensed osteopath.

4. The defendant had a legal right to use the title "Doctor."

ARGUMENT.

I.

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

Insistment is made that the Medical Act is limited in its title and objects to those who practice medicine and surgery only.

The title of the Medical Act reads as follows:

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

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

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

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

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

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

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

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

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

The manifest purpose and object of the Medical Act as originally enacted by the Legislature in 1894, was to protect the medical profession against

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

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

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

The purport of this decision clearly indicates that in the mind of the court the Medical Act of 1894 was limited to those only who attempted to practice medicine and surgery in the common and usual manner in which medicine and surgery was practiced, namely, by the giving, offering or prescribing of drugs and medicines or the performing of surgical operations. Further by the enactment of this legislation there was apparently no occasion for including any other person or of prohibiting the practice of medicine and surgery by any person other than those who attempted to give

drugs or medicines without a license and therefore the title of the act was so limited and circumscribed. The "persons" mentioned and referred to being intended to include only those, who, without license, attempted or did prescribe or give drugs or medicines.

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

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

In 1925 the Legislature attempted to enlarge the provision of Section Eight of the original Medical Act without repealing the Medical Act or enlarging the title, by providing among other things that any person shall be regarded as practicing medicine and surgery who holds himself or herself out as being able to diagnose, treat, operate or prescribe for any human disease, injury, deformity, or physical condition or who shall either offer or undertake by any means or methods to diagnose, treat, operate or prescribe for any human disease, injury, deformity or physical condition.

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

If the intendment of the Legislature was by this amendment and enlargement to include those persons who afforded relief by drugless methods such as massage, application of heat, or the adjustment of the spine, or other parts of the body, as the practice of medicine and surgery, it is submitted first, that such could not be done because

such objects were not fully expressed or comprehended in the title of the Medical Act and secondly because such form of treatment was not clearly expressed as being intended to be prohibited by this section. It would be going outside of the realm of medicine and surgery to include some other method or form of treatment.

It is further urged that the language of Section Eight of the Medical Act as amended, P. L. 1915, page 482, prohibiting any person from diagnosing, treating, operating and prescribing for human diseases without being licensed to practice medicine and surgery by its very terms excludes all other forms of healing and was intended to apply only to those who attempted to practice medicine and surgery without a license; *in other words, the legislative definition in the Medical Act could not by the limited terms of the Act, and especially the title include any form of treatment other than Medicine and Surgery as such is commonly known and practiced.*

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

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

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

In the case of Peer v. Dixon, 83 L. 366, we have somewhat of an analogous principle which might

apply with propriety to the situation under discussion.

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

Applying this reasoning to the case at bar it could well be said that the words in the medical act "any persons" and "by any means or methods" could go no further than to include any other persons of like character, namely, medical men or those who practice medicine and surgery by the use of drugs and medicines.

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

In Jensen v. Woolworth, 92 L. 529, the court said in construing a statute, *where literal interpretation may lead to absurd results, resort may be had to the principle that the spirit of the law controls the letter.*

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

Osteopaths were licensed under a separate act, P. L. 1913, page 388. They are by law authorized to treat human ailments and diseases, and if they

do so by methods that do not involve the use of drugs and medicines, which are peculiar to the practice of medicine and surgery, the Medical Board cannot complain and they have no jurisdiction or right to complain against a licensed osteopath, or to attempt to construe his practices to be that of medicine and surgery, under the limited title of the Medical Act.

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

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

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

II.

(A) The Complaint is defective.

The complaint, as found on page 2 of the State of Case, and heretofore set up, merely recites the general language of the statute, without setting forth the facts or what the defendant actually did which it was claimed constituted a violation of the Medical Act, so that the defendant would know what he was called upon to meet.

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

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

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

It may be insisted on behalf of the complainant-appellee that this being a quasi-criminal proceeding, that it was not necessary to do more than charge in the words of the statute, but the Court of Errors and Appeals in the case of Linden Park Horse Association v. State, reported in 55 Law, page 557, has stated otherwise in the following language:

> "The crucial test of the inquiry obviously is whether the specifications of the acts that constitute the house a disorderly one are

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

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

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

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

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

> "It was necessary to the validity of the complaint that it should show upon its face that the place where the profane and obscene language was used was a public place. For it is the public character of the place where the obscene or profane language is used which makes the use of such language an offense within the meaning of the ordinance. *The complaint fails in this regard.*"

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

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

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

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

It may be further argued on behalf of the Medical Board that under the amendment to the Medical Act in 1921, it was not necessary to file any pleadings, but the Supreme Court clearly held in the case of Watt v. Wallerius, 123 Atl., p. 723, decided March 12th, 1924, that although Section Thirty-Two of the Motor Vehicle Act provided for an arrest without warrant and the bringing of a person before a magistrate where he shall be detained until the officer making the arrest shall make oath or affirmation, meant that such complaint must be in writing, although Section Thirty-One, Paragraph 1, Chapter 208, P. L. 1921, provided that no written complaint need be made.

It may be suggested by the Medical Board that under the case of Lowrie v. State Board of Den-

tistry, reported in 90 Law, page 54, that the question has already been decided by the Supreme Court, but a reference to that case would indicate that the objection there was as to the failure to charge definite and specific time when, place where, and person upon whom the defendant practiced dentistry.

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

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

(B) Dismissal of Complaint should have been sustained.

It will be observed on reading the complaint (pages 2 to 4) that it charged merely, as already stated, that: "Cometis De Young did hold himself out as being able to and did diagnose, treat, operate and prescribe for human diseases, pains and physical conditions."

By authority of Chapter 217, Laws of 1913, page 388, the Medical Board was permitted to examine licensed persons who practiced osteopathy. The Act provided that the circulum of study for such persons applying for license should include:

> "Anatomy, physiology, pathology, histology, hygiene, toxocology and *dietetics,* chemistry, obstetrics, gynecology, osteopathic and physical diagnosis, principals of surgery and medical jurisprudence, bacteriology, theory and practice of osteopathy, and such other subjects as the Board may elect."

A licensed osteopathic physician, therefore, had the right to diagnose, treat, operate and prescribe for human diseases.

Under the limited charge of the complaint and the admission by the Attorney General that Cometis De Young was a licensed osteopath, and his right to practice having emanated from the Medical Board by reason of the Osteopathic Act, the trial court committed no error in dismissing the complaint, and the action of the Supreme Court in reversing was a manifest error.

While it appears in the testimony that evidence was introduced as to the use of a fluoroscope and other mechanical devices propelled by electricity, such evidence was improper under the form of complaint, and as the record shows objection was made thereto (page 21, line 20).

It is submitted that if the Medical Board desired to charge defendant for the treatment of diseases by a method claimed to be prohibited, it should have been set forth in the complaint, objection to which was made at the opening of the trial (pages 9 to 15).

It is insisted that the trial court had no other course to follow but to dismiss the complaint when it appeared by admission that the defendant was a licensed osteopath and entitled to diagnose and treat human diseases.

III.

Doctor De Young in his treatments was within his rights as a licensed osteopath.

The defendant was licensed as an osteopath by authority of the provisions of Chapter 217, P. L. 1913, page 388.

Doctor De Young did not practice medicine. He did not attempt to usurp any of the rights peculiar to the practice of medicine and surgery.

All sciences of the healing art are more or less progressive.

In our modern times mechanical appliances take the place of antiquated methods by hand.

The use of a fluoroscope such as defendant had is but another advanced method to more accurately determine the cause of physical ailments. It was an aid in diagnosis.

Also the taking of blood pressure is a simple mechanical air pressure device or test (page 20, line 10) to ascertain whether a patient can undergo osteopathic treatments. It is but another means of detecting more accurately the manifestations of the pulse of the body and especially the vitality of the patient (page 20, line 5), and used by doctors generally as an assistance in making diagnosis.

Doctor De Young did not himself make urinalysis tests. That was done by the laboratory (page 22-23).

Even if the analysis was made by Doctor DeYoung it was proper as a method of diagnosis. For as developed in this case, one of the patients was found to have mucous in the urine. Instead of prescribing a medicine as a means of elimination

Doctor De Young merely advised a change of diet and the elimination of certain foods (page 20, line 36), which was in line with and comprehended in the practice of osteopathy, because dietetics was one of the important subjects making up the qualifications of an osteopath under the Osteopathic Act, and a subject which was not included in the examination for medical men.

The lights used by Doctor De Young were merely the ordinary electric light bulbs found in any home, which it is generally known are used by drugless practitioners preliminary to the treatment to soften any rigidity of muscle. It is merely a heat application preliminary to the real treatment.

As a matter of fact there could be no monopoly as to the use of lamps controlled by electricity. They may be and are purchased at any electrical store or drug store or from the manufacturer direct, without prescription, and used generally in many homes. If, as must be recognized, these lamps are a household article and for such use an individual would not be committing any violation, how, then, can it be said that a Doctor of the drugless profession is amenable to any charge of practicing medicine.

As a laxative Doctor De Young suggested orange juice (page 18).

Nowhere in the Medical Acts from the time of their inception in 1772 down to the present date, is there any statutory definition of what constitutes the practice of medicine and surgery. It is generally understood, however, to mean what the words in their natural import imply, namely, the giving of drugs or medicines such as cannot be acquired without prescription, and the performing of surgical operations. The last Medical Act of 1894, with its various supplements and amend-

ments, provides, as does the Osteopathic Act, that those who desire to become licensed are to be examined in certain subjects heretofore referred to. Those which apply to the practice of medicine and surgery include materia medica and therapeutics, obstetrics, gynecology, practice of medicine, surgery and surgical anatomy, physiology, chemistry, histology and pathology.

There is very little difference in the subjects for examination between those who seek to practice medicine and those who desire to become licensed as osteopaths. The osteopath is required by the act, P. L. 1913, page 388, to study and be examined in all the subjects that are required for the medical man except the practice of medicine and surgery and surgical anatomy. In the place thereof the osteopath must study and be examined in merely the principles of surgery and medical jurisprudence with the additional subjects of toxocology, dietetics and bacteriology, so that as a matter of fact the osteopath is required to cover in the general subjects, outside of the practice of medicine and surgery, a greater field.

It will be noted that while osteopathy may be referred to as a drugless method of treatment, by hand manipulation and massage, that minor surgery is comprehended and knowledge is required as to medical jurisprudence, diagnosis and diet, as well as various other manifestations and systems.

To construe one clause of the osteopathic act in a literal, limited and restricted sense and hold an osteopath to the use of his hands only would be absurd.

Likewise to maintain that an osteopath must pursue a course of study and be required to familiarize himself with anatomy, nerves, muscles and various organs of the body and their functions, as well as diseases and then without being able to

diagnose, by mechanical devices or otherwise determine the nature and cause of an ailment, would be ridiculous.

An osteopath is dealing with the ailments of the human body just as a medical practitioner does. The only difference is that the osteopath attempts to accomplish a result or cure by drugless methods, unknown to the medical man, whereas, the medical practitioner aims at a cure or relief by the use of drugs or medicines, or surgical operations.

It would seem to be just as absurd to say that a medical practitioner must give medicine or drugs without the right to decide or determine what the ailment was or where it exists by a proper diagnosis, as it would be to declare that an osteopath must massage only without undertaking to determine by diagnosis what caused the ailment or where located.

The Osteopathic Act when read in its entirety admits and comprehends the right of the licensed practitioner to diagnose cause, nature and location of physical ailments and deformities.

Chancellor Walker said, in *re* Merrill, 88 Eq., 261, at page 273:

> "It is an established rule in the exposition of statutes that the intention of the Legislature is to be derived from a view of the whole and every part of the statute, taken and compared together. The real intention, when ascertained, will prevail over the literal sense of terms. When words are not explicit, the intention is to be collected from the context and the occasion and necessity of the law and from the mischief felt, and the remedy in view; and the intention is to be taken or presumed according to what is consonant to reason and good direction."

Citing Morris Canal v. Central Railroad Co., 16 Eq. 419, further quoting from the decision in *re* Merrill, page 273:

> "In State v. Clark, 29 L. 96, it was said at page 99, 'The language of the Act, if construed literally, evidently leads to an absurd result.
>
> " 'If a literal construction of the words of a statute be absurd, the Act must be so construed as to avoid the absurdity. The court must restrain the words.
>
> " 'The object designed to be reached by the act must limit and control the literal import of the terms and phrases employed.' "

See also State v. Scott, 86 L., page 133, and Moore v. Johnson, 85 L. 40, and Jensen v. Woolworth, 92 L. 529.

Nowhere in the Medical Act is there any provision requiring those who seek to become licensed as medical practitioners to take an examination in electro-therapeutics or the use of electricity in the treatment of diseases, and medical practitioners almost universally have adopted this new science or method in conjunction with their general practice of medicine without any special legislative authority.

In no act of the Legislature can we find any provision or requirement for an examination before a practitioner can use electricity. There is no clause in any of the Medical Acts which gives to the medical practitioner the exclusive right to use the general commodity of electricity, he merely assumes the right under the designation "medicine and surgery". It would seem unfair to discriminate comparing the respective rights of the practitioners.

All doctors, whether they be medical men or drugless practitioners, use various devices as an

additional means of diagnosis and aid to treatments.

The Supreme Court in deciding the question adverse to the now present appellant (page 51) said:

> "The question before us for decision is whether or not an osteopath who gives electric treatments to his patients is violating the Medical Act. In the case of State Board of Medical Examiners v. Lezenby, 1 Misc. Rep. 20, it was held that the giving of electric treatments was a violation of the State Medical Act. It does not appear in this case as to whether or not Lezenby was an osteopathic physician. The case however is authority to the effect that electric treatments constitute a violation of the Medical Act. We cannot see that under the provisions of the Medical Act it can make any difference by whom the electric treatments are given, if not given by a physician duly licensed to practice medicine and surgery under the Medical Act, approved May 22nd, 1894, and its amendments and supplements."

The Supreme Court seemed to be guided in its decision by the Lezenby case, but a reference to the record of that case as filed in the Supreme Court Clerk's Office, and a copy of the testimony returned with the papers, shows that Lezenby did not profess to be a doctor, and that he was not licensed to treat human diseases by any method.

It is contended on behalf of the defendant-appellant in this case that he did not treat the human body as such by electricity applied directly to the body. His use of electricity was merely to propel or control mechanical devices either for the purpose of diagnosis or as a step preliminary to his treatment by hand manipulation.

We think that what the Supreme Court had in

mind in the Lezenby case was that the actual treatment, by whatever method it may have been, *without the person being licensed,* was the controlling factor that made Lezenby amenable to the the literal terms of the Medical Act. The distinction in the case at bar being that Doctor De Young was, in fact, licensed to treat human diseases, and for that reason he had the same right to use electricity as an adjunct to his profession as he had the right to use electricity in his home or office.

Osteopaths are exempted from the provisions of the Medical Act.

Under the exemption provision of the Medical Act, Chapter 221, Laws of 1921, page 702 at page 707, among those who were not amenable to the provisions of the Medical Act were licensed osteopaths. The Legislature evidently intended that all persons, whether they be dentists, optometrists, chiropodists, veterinarians, osteopaths, or by whatever name they were referred to, *if licensed were entitled to exemption.* It will be noted that the Laws of 1921 also exempted those who had been engaged in giving electric treatments for fourteen years. They also exempted any nurse, masseur or electrician while operating under the specific direction of a *"regularly licensed physician".* This latter clause admits and implies that any licensed *physician* must necessarily be given the authority to use electricity, or at least be exempt from so using because of the fact that anyone under the direction of a *licensed physician* would be exempt.

By the very language employed in the title of the Act (P. L. 1913, page 388) osteopaths were referred to as *"osteopathic physicians."*

Attention is also directed to the exemption of certain persons under the Medical Act, P. L. 1921, p. 702 at p. 707, wherein it exempts those who *"without the use of any drug or material remedy,"* treat the sick.

It is, therefore, submitted that by virtue of the limited use of electricity as an apparent aid or adjunct to the osteopathic treatment, plus the specific exemption in the Medical Act, that the uses of electric current in the case now under discussion could not be construed as or in any way constituting a trespass upon the rights of the medical practitioner, there being no application or treatment by electricity direct to the body, and for that reason it is submitted the conclusions arrived at by the Supreme Court were incorrect and that judgment should be reversed, to the end that the trial court be sustained.

IV.

The defendant had a legal right to use the title "Doctor."

Although objection was not made as a ground for reversal the Supreme Court presumed to decide that the use of the term "doctor" by defendant-appellant (page 52):

> "Warranted a conviction, as the defendant did use the letters "Dr." in connection with his name and did offer and undertake by a method to treat a physical condition."

We think the Supreme Court was in error in this finding for what is an "Osteopathic Physician" unless he is a "Doctor"?

The Legislature evidently recognized an osteopath as a doctor because in the act (P. L. 1913 at page 389) one of the pre-requisite requirements was that before any person could take the examination prescribed he must produce evidence that he (quoting from the Act) *"has been duly graduated with the degree of* DOCTOR *of osteopathy from a legally incorporated school or college of osteopathy."*

Defendant being a licensed osteopath the law presumes that all the requirements were complied with. In fact, there is no evidence on the part of the State Board to indicate that defendant was not a graduate of a college of osteopathy before receiving his license, wherein a degree of doctor was conferred upon him.

The medical man does not and cannot have the exclusive right to the term "Doctor", for the object of the Medical Act was to make only those persons amenable to the penalty who, *not being licensed,* did by the use of the term "Doctor" or "Dr." hold himself out as being able to treat diseases.

In this case the defendant was not only licensed to treat diseases, but was bound to produce evidence of the degree of "doctor" being conferred upon him before he could become licensed.

It might be interesting to know that in the case of State v. MacKnight, reported in 42 Southeastern, p. 580 at page 582, the Supreme Court of North Carolina declared:

> "We attach no weight to the argument that the defendant hung out his sign and advertised himself as "Doctor". There are many kinds of Doctors, besides Doctors of medicine—as doctors of laws, doctors of divinity, doctors of physics, and veterinary doctors, and others still. Besides, in this country, so far, at least, as titles go, 'honors are easy.' We know from common knowledge that druggists' clerks are ordinarily addressed as "Doctor"; justices of the peace are usually called "Judge", and a teacher of the saltatory art always styles himself "Professor", while "Yarborough House Colonels" and "Honorables" by courtesy of like tenor are almost as 'Thick as autumnal leaves that strew the brooks in Vallombrosa.' "

There was no attempt in this case to mislead anyone by the use of the term "Doctor". Those who went to the defendant for treatment knew that he was an "Osteopathic Physician."

One of the witnesses for the State Medical Board, Erma Spruce (page 19, line 21) said that at the entrance of defendant's office there were the letters "Doctor De Young" *in connection with which were the further letters "Osteopathic Physician and Surgeon",* together with the office hours; and at the same entrance the words "Doctor De Young" and "Doctor De Young's Health Office". All these signs were at the entrance to the defendant's office, and it would be apparent to anyone that it was the office of one and the same person, namely, Doctor De Young, an "Osteopathic Physician" as the letters on the entrance door indicated.

There was no claim on the part of the Medical Board that anyone was misled.

It is, therefore, submitted that under the Osteopathic Act the defendant had the right to use the term "Doctor" and that he could not be charged for a violation of the Medical Act, because he gave treatments in connection with his use of the term "Doctor", *for it appears he was licensed as*

an osteopath and legally entitled to give such treatments.

It is respectfully urged that the judgment of the Supreme Court be reversed and set aside to the end that the Trial Court be sustained in dismissing the complaint.

Respectfully submitted,

ELMER W. ROMINE,
Attorney and Counsel for
Defendant-Appellant.

New Jersey Court of Errors and Appeals

State Board of Medical Examiners of New Jersey,
Complainant-Appellee,

vs.

Cometis De Young,
Defendant-Appellant.

Brief for the Complainant-Appellee 10

FACTS

The defendant-appellant is a licensed osteopath and was charged with the practice of medicine and surgery without a license. The suit to recover the penalty for the violation of the act was instituted before the District Court of the City of Passaic. The defendant-appellant was tried and the court dismissed the complaint. The Supreme Court allowed a writ of certiorari to review the decision of the District Court and in *a per curiam* opinion (Case, p. 49.) reversed it. 20 30

Afterwards this appeal was taken to review the decision of the Supreme Court. The acts committed by the defendant-appellant were fully proven and are not disputed by him. These facts will be discussed in this brief.

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

ARGUMENT

I

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

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

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

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

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

> "That any person shall be regarded as practicing medicine or surgery, within the meaning of this act who shall use the words or letters 'Dr.', 'Doctor,' 'Professor,' 'M.D.,' or 'M.B.' in connection with his or her name, or any other title intending to imply or designate him or her as a practitioner of medicine or surgery in any of its branches, and who in connection with such title or titles or without the use of such titles, shall prescribe, direct, recommend, advise, apply, give or sell, for the use of any person or persons, any drug or medicine or other agency or application for the treatment, cure or relief of any bodily injury, infirmity or disease; and it is further provided that the use of any one of the aforementioned titles or the exposure of a sign, circular, advertisement or any other device or information, indicating thereby the occupation of the person or persons, shall be considered prima facie evidence; and it is further provided that the provisions of this act shall apply to all persons professing and attempting to cure diseases by means of the so-called system of 'faithcurism,' 'mind-healing,' 'laying-on-of-hands,' and other similar systems."

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

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

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

The defendant-appellant relies upon the Act of

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

State, Ex Rel. Walter et al. v. Town of Union, 33 N. J. L. 350.

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

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

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

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

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

The Supreme Court in the case of *State Medical Board v. Johnson*, decided *March 17, 1928*, in discussing and passing upon the very 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 practice medicine or surgery and that the amendments are unconstitutional because they have been extended to include offenses not embraced in the original act of 1894. We consider the title broad enough to include the offenses under the amendments to the act. As was said by Mr. Justice Van Syckle in the case of *State vs. Town of Union, 33 N. J. L. 350;* 'The unity of the object must be sought in the end which the legislative act purposes to accomplish and not in the details provided to reach that end.' The same idea was expressed by Mr. Justice Garrison in *Moore v. Burdett, 62 N. J. L. 163,* when he said the title of an act was a label and not an index."

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

II

The Complaint is not defective and the Dismissal should not have been sustained.

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

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

The complaint (Case, p. 3..) charges:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Cases elsewhere support the same view.

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

Parks v. State, 159 Ind. 211.

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

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

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

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

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

III

The Defendant-Appellant was not Within His Rights in Committing the Act complained of as a Licensed Osteopath.

Chapter 217, P. L. 1913, (First Supp. C. S. 9660), in sections four and five, provides:

4. "The license or registration (as the case may be) provided for in this act shall authorize the holder thereof to practice osteopathy as hereinafter defined in all its branches as taught and practiced in the legally incorporated schools or colleges of osteopathy, but shall not entitle the holder thereof to prescribe or administer drugs, or perform such surgical operations as require cutting.

5. "For the purposes of this act the practice of osteopathy is defined as follows:

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

In *State v. Herring, 70 N. J. L. 34,* the Court held that an osteopathic physician was limited in giving treatment to the manipulation of various parts of the body by hand.

Cases elsewhere support our State to the effect that osteopathic treatments are limited to the use of the hand or hands by the licensee.

In *State v. Johnson 114 Pac. 390 (84 Kas. 411),* the Court in speaking of osteopathy, at page 392 said:

"It has been judicially defined as 'A method of treating diseases of the human body without the use of drugs, by means of manipulations applied to the various nerve centers—chiefly those along the spine—with a view to inducing free circulation of the blood and lymph, and an equal distribution of the nerve forces. Special attention is given to the readjustment of any bone, muscles or ligaments not in normal position.' "

10 In *Little v. State, reported in 84 N. W. 248 (60 Nebr. 749)*, the Court, at page 248, said:

"He is what is known as a 'practitioner of osteopathy,' the practice of which consists principally in rubbing, pulling and kneading with the hands and fingers certain portions of the body, and flexing and manipulating the limbs of those afflicted with disease, the object of such treatment being to remove the cause or causes of trouble."

In *Nelson v. State Board of Health, 57 S. W.* 20 *501 (108 Ky. 769)*, the Court, at page 504 said:

"Osteopathy teaches neither therapeutics, materia medica, nor surgery. Bacteriology is also ignored by it. As we understand the record it relies entirely on manipulation of the body for the cure of diseases. Its theory is that a large number of ailments are due to irregular nerve action and that by stimulating or repressing the nerve centers by manipulation they enable nature herself to right the evil. It administers no drugs; it uses no knife; 30 it does not profess to cure all diseases. * * * It relies wholly upon manipulation, aiding the *vis medicatrix naturae.*"

In *State v. Liffing, 55 N. E. 168 (61 Oh. St. 39)*, the Court, at page 168, said:

"The rubbing and kneading charged in the indictment are consistent with our general knowledge that in practice, the adherents to osteopathy wholly reject drugs and medicines. The application of the theory that disease may be cured by the manipula- 40 tion of different parts of the body."

The defendant-appellant, therefore, being a licensed osteopath, in the practice thereof, in the giving of treatments was limited by the act under which he received his license to the use of his hand or hands only. The Legislature defined the practice and the holding of a license by the defendant-appellant under the statute affords him no greater rights than the statute itself gives him.

The defendant-appellant had a well equipped 10 office in the City of Paterson, Passaic County, New Jersey. The office consisted of a reception room and various smaller rooms or booths, in which were located electric instruments or machines of various kinds. The State produced five witnesses who had visited the defendant-appellant. The evidence shows that on some he used a fluoroscope and with it diagnosed their physical condition; he took their blood pressure; he pre- 20 scribed certain things to eat; he caused analysis to be made of specimens of urine and gave the witnesses a report thereon. He gave electrical treatments by the use of electric instruments and machines on various parts of the body and he also used a lamp for concentrating strong hot rays on various parts of the body. The witnesses paid him for these treatments. The defendant-appellant did not testify in his own behalf; therefore the State's proof stands uncontradicted that the 30 defendant-appellant committed the acts complained of.

The acts complained of and committed by the defendant-appellant are not authorized under the act to regulate the practice of osteopathy. The statute regulating the practice of osteopathy is a penal statute. It defines an offense not known to the common law. It is a statutory offense and as such must be construed strictly. The defendant- 40

appellant is limited in his treatments to the use of his hands only and beyond that he has no authority to go. That he did so in this case is undisputed.

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

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

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Attorney of Complainant-Appellee.