

FILE

Subject

*State Bonds
Healing Arts*

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STATE OF KANSAS

Office of the Attorney General

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VERN MILLER
Attorney General

January 17, 1974

Opinion No. 74- 12

Honorable Dan Bromley
State Senator
Senate Chamber
Topeka, Kansas 66612

Dear Senator Bromley:

You inquire first, whether naturopathy constitutes a healing art as defined by K.S.A. 65-2802. Subparagraph (a) thereof states thus:

"The healing arts include any system, treatment, operation, diagnosis, prescription, or practice for the ascertainment, cure, relief, palliation, adjustment, or correction of any human disease, ailment, deformity, or injury, and includes specifically but not by way of limitation the practice of medicine and surgery; the practice of osteopathy; and the practice of chiropractic."

Webster's Third New International Dictionary (Merriam-Webster) defines naturopathy thus:

"A system of treatment of disease emphasizing assistance to nature and sometimes including the use of various medicinal substances (as herbs, vitamins, and salts) and certain physical means (as manipulation and electrical treatment)"

As a system of treatment of disease, it clearly constitutes a healing art within the compass of the Kansas Healing Arts Act.

You inquire secondly, whether, if it does constitute a healing art, the practice of which is not provided for by the Kansas act, the practice of naturopathy is presently unlawful.

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The act recognizes three branches of the healing arts, the practice of medicine and surgery, of osteopathy and chiropractic. K.S.A. 65-2869, -2870, and -2871. Naturopathy is not a branch of the healing arts which the Board is statutorily empowered to license. The broad purpose of the Kansas Healing Arts Act is set forth in K.S.A. 65-2801:

"Recognizing that the practice of the healing arts is a privilege granted by legislative authority and is not a natural right of individuals, it is deemed necessary as a matter of policy in the interests of public health, safety and welfare, to provide laws and provisions covering the granting of that privilege and its subsequent use, control and regulation to the end that the public shall be properly protected against unprofessional, improper, unauthorized and unqualified practice of the healing arts"

No person may engage in the practice of any branch of the healing arts unless he shall have obtained a license for that purpose. K.S.A. 65-2803. K.S.A. 65-2872 sets forth certain practices which are deemed not to constitute the practice of the healing arts. Subsection (c) states that "[e]very act or practice falling in the field of the healing art, not specifically excepted herein, shall constitute the practice thereof." Thus, although naturopathy must be deemed to constitute a branch of the healing arts as defined by the act, the absence of any authority for the licensing thereof renders the practice of naturopathy a violation of the act, subject to injunction under K.S.A. 65-2857, and prosecution for the unauthorized and unlawful practice of a healing art.

Third, you inquire whether a naturopath may

"gratuitously administer ordinary household remedies as provided by [K.S.A.] 65-2872(b), and at the same time charge for other medical services he legally performs, providing, of course, good faith in charging is shown?"

K.S.A. 65-2872 states in pertinent part thus:

"The practice of the healing arts shall not be construed to include the following classes of persons:

(b) Persons gratuitously administering ordinary household remedies."

The answer to this question necessarily depends upon the precise

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factual circumstances in which such remedies are dispensed. K.S.A. 65-2867 states thus:

"The opening of an office for the practice of the healing arts, the announcing to the public in any way the intention to practice the healing arts, the use of any professional degree, or designation, or any sign, card, circular, device, or advertisement as a practitioner, or as a person skilled in the same, shall be prima facie evidence of engaging in the practice of said healing arts as defined in this act."

The cited exemption speaks for itself. What constitutes an "ordinary household remedy" is not defined. However, whatever the scope of that term, the administration of such remedies gratuitously does not constitute the practice of the healing arts. When such remedies are dispensed in conjunction with the provision of medical services, however, difficult factual questions may be presented, e.g., whether the charge for the service is intended to or actually encompasses the remedies. Obviously, if one has an ongoing and established practice, and consistently and regularly dispenses such so-called "household remedies" ostensibly gratuitously to patients in the course thereof from whom he receives payments, a serious question would arise whether the remedies were dispensed in fact "gratuitously."

Because of the closing of the College of Emporia, we regard questions numbered five and six as moot.

You inquire next, whether the use of the letters "N.D." after the name of a naturopath constitutes a violation of any Kansas law. K.S.A. 65-2885 states thus:

"No person licensed hereunder shall use a title in connection with his name which in any way represents him as engaged in the practice of any branch of the healing arts for which he holds no license: Provided, however, That every such licensee when using the letters or term "Dr." or "Doctor" shall use the appropriate words or letters to identify himself with the particular branch of the healing arts in which he holds a license."

Thus, the use of the letters "N.D." which represents the user as engaged in the practice of naturopathy as a healing art and without a license therefor would constitute an apparent violation of the foregoing.

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Next, you inquire whether a naturopath would violate the Kansas Healing Arts Act if he permitted a patient

"on [the] patient's own volition, and without coercion, [to] pierce his (patient's) own flesh to enable the Naturopath to draw blood for laboratory tests."

Attorney General John Anderson, Jr., concluded that the penetration of the tissue of a living human body in order to withdraw blood for diagnostic purposes constituted surgery, which was prohibited to chiropractors under K.S.A. 65-2871. This opinion remains extant. Obviously, persons can and do provide self-medication through injections, for example, and such persons do not engage in any prohibited practice thereby. Nothing in the act forbids an individual to penetrate his own tissue for the purpose of withdrawing blood. Where, however, one holds himself out as engaged in the practice of a healing art, and in the course thereof directs, supervises, oversees, assists, or otherwise plays a vital role in the penetration of the tissue of a living human being for the withdrawal of blood, the finding that he is thereby himself engaged in the practice of surgery prohibited to other than those licensed therefor, depends upon precise factual circumstances, which cannot usefully be resolved by a general statement of law based upon purely hypothetical foundations.

You also inquire whether

"application of the exemption in K.S.A. 65-2913 [would] be proper if practice is limited to the methods specified, and if so, does this provide exemption from the broad definition of persons practicing the healing arts."

K.S.A. 65-2901 et seq sets forth a regulatory act dealing with the practice of physical therapy as defined therein in part as

"the treatment of any disability, injury, disease or other conditions of health of human beings, or the prevention of such disability, injury, disease or other conditions of health and rehabilitation as related thereto by the use of the physical, chemical and other properties of air, cold, heat, electricity, exercise, massage, radiant energy, including ultraviolet, visible and infrared rays, ultrasound, water and apparatus and equipment used in the application of the foregoing or related thereto."

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K.S.A. 65-2913 forbids any person to hold himself out as a physical therapist, or to use in conjunction with his name any words or letters, abbreviations or insignia indicating or implying that he is a physical therapist, without a valid certificate of registration, subject to the proviso that

"nothing in this act shall prohibit any person not holding himself out as a physical therapist from carrying out as an independent practitioner without prescription or supervision, the therapy or practice for which he is qualified, and shall not prohibit such persons from using corrective therapy, . . ."

This proviso may not be construed, in our opinion, to authorize any person to engage in the practice of a healing art as defined in K.S.A. 65-2802 without a license therefor. Naturopathy, as indicated above, does constitute a healing art.

Lastly, you inquire what action must be taken to render the practice of naturopathy as lawful in this state. Obviously, legislation is necessary to provide an appropriate statutory definition thereof, and to provide for license of those seeking to engage in that practice.

Yours very truly,

VERN MILLER
Attorney General

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