

**OPINION
43-78**

December 8, 1943 (OPINION)

OSTEOPATH

RE: Not qualified to act on Insanity Commission

I have your letter of December 1, in which you inquire whether a doctor of osteopathy may act as a member of the insanity board of any county in the state.

Section 2547 of the 1913 Compiled Laws provides for the appointment of a board of "Commissioners of Insanity". The County Judge shall be a member of such board and shall be its chairman. The other two members shall be appointed by the board of county commissioners, one to be a reputable practicing attorney, and the other "Shall be a reputable practicing physician". The question, therefor, is whether the provision, "reputable practicing physician," would include a doctor of osteopathy.

We have given this matter very careful consideration, and have come to the conclusion that a doctor of osteopathy cannot act as the physician required to be appointed on the board of insanity commissioners. At the time that the statute providing for the appointment of insanity commissioners was first adopted, the statute made no provision at all for the licensing of doctors of osteopathy in the state of North Dakota. The present statute providing for the appointment of commissioners of insanity is almost identical with the statute which was in force at the time prior to the licensing of osteopaths in this state. At least, the provision requiring the appointment of one "reputable physician", is identical. It is therefor clear that the framers of the statute did not intend osteopaths to be included in the term "reputable physician". The present statute, regulating the practice of osteopathy in the state of North Dakota, is chapter 202 of the Laws of 1933. That statute specifically provides that physicians licensed as osteopaths shall have the same rights as physicians of other schools, with respect to the treatment of cases in state institutions, and also provides that physicians licensed under the osteopathy act shall have equal rights with other physicians in matters pertaining to claims arising under the State Compensation Act. Since the Compensation Act authorizes the bureau to make necessary expenses to obtain the services of various persons, including "physicians", and, since the Legislative Assembly in enacting chapter 202 above referred to, felt it necessary to specifically provide that doctors of osteopathy shall be included under the provisions of the Compensation Act, it is an indication that the members of the Legislative Assembly felt that the term "physician", as used in the Compensation Act, originally, did not include doctors of osteopathy. The Supreme Court of Kentucky in the case of *Nelson v. State Board of Health*, 57 S.W. 501, held that the term "physician", used in the statutes of the state, in reference to the practice of medicine, refers to those exercising the calling of treating the sick, as commonly practiced "at the time the act was passed". The court goes on to state that, since the term "physician" as used in the statute then being considered, did not

include an osteopath at the time the Act was passed, it could not be held that an osteopath was a "physician", within the meaning of that particular statute.

The California court, in the case of *Ex Parte Rust*, 169 Pac. 1050, held that a statute which authorizes a "physician and surgeon" to practice optometry, did not include and permit an osteopath to practice optometry.

In the case of *Le Grand v. Security Benefit Association*, 240 S. W. 852, the Missouri Supreme Court held that an osteopath is not a physician or a surgeon, and that a statement in an application for insurance by the applicant, in which such applicant stated that he had not consulted a physician or a surgeon within one year, was not false, because he had consulted an osteopath, since an osteopath is not a physician or a surgeon.

It seems to me that if present qualifications of an osteopath qualify them to act on a board of insanity, that this is a matter which should be brought to the attention of the Legislative Assembly for their consideration, but under the present laws, an osteopath cannot act as a commissioner of insanity.

ALVIN C. STRUTZ
Attorney General