

Chapter 677

Physicians

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CASE CITATIONS: *State v. Buck*, (1953) 200 Or 87, 262 P2d 495; *Board of Medical Examiners v. Mintz*, (1963) 233 Or 441, 378 P2d 945; *State v. Elliott*, (1963) 234 Or 522, 383 P2d 382; *State v. Hawkins*, (1970) 255 Or 39, 463 P2d 858.

ATTY. GEN. OPINIONS: Employing unlicensed physicians in state institutions, 1948-50, p 334; licensed masseur advertising "physical therapy," 1956-58, p 250; "drug" or "medicine" as determined by use, 1962-64, p 206; applicability to operation of medical laboratories, 1962-64, p 324; use by optometrist of electronic tonometer, 1962-64, p 466; as separate and distinct from statute licensing osteopathic physicians, 1964-66, p 387; application of proposed sales tax law to sale of eyeglasses by optometrists and opticians, 1966-68, p 438; city license fee imposed on state licensed occupations, (1970) Vol 34, p 1089.

LAW REVIEW CITATIONS: 36 OLR 154; 41 OLR 326; 6 WLJ 602.

677.010

NOTES OF DECISIONS

A complaint sufficiently informed the defendant of the nature of the charge against him when it charged him with performing an abortion. *Board of Medical Examiners v. Buck*, (1951) 192 Or 66, 200 Or 488, 232 P2d 791, 258 P2d 124, app. dis., 346 US 919, 98 L Ed 202, 74 S Ct 1029.

FURTHER CITATIONS: *Board of Medical Examiners v. Mintz*, (1963) 233 Or 441, 378 P2d 945.

ATTY. GEN. OPINIONS: Requirements for operation of laboratory by licensed physician, 1956-58, p 139; use of fluorescein by optometrists, 1962-64, p 206; medical laboratory procedures as practice of medicine, 1962-64, p 324; use of diagnostic instruments in the practice of optometry, 1962-64, p 466; distinguishing between diagnosis and technical performance of laboratory tests, 1964-66, p 353; supervision of nurse immunizing or giving tuberculin tests, (1969) Vol 34, p 900.

677.060

NOTES OF DECISIONS

This section was not unconstitutional as an abridgement of privileges and immunities under U.S. Const. Am. 14, §1. *State v. Smith* (1929) 127 Or 680, 273 P 343.

The right accorded a patient to employ the practitioner or treatment of his choice does not exempt from prosecution one who practices without a license. *State v. Burroughs*, (1929) 130 Or 480, 280 P 653.

The exemption contained in subsection (9) [now (7)] is limited to those who believe in mental treatment. *State v. Lee Chue*, (1929) 130 Or 99, 279 P 285.

A corporation may carry on the business of using the

X-ray in connection with electrotherapy and roentgenology. *Doumitt v. Diemer*, (1933) 144 Or 36, 23 P2d 918.

This section makes it clear that this chapter does not apply to persons practicing the other healing arts. *Sutton v. Cook*, (1969) 254 Or 116, 458 P2d 402.

FURTHER CITATIONS: *Wood v. Miller*, (1938) 158 Or 444, 76 P2d 963; *Board of Medical Examiners v. Buck*, (1954) 200 Or 488, 258 P2d 124.

ATTY. GEN. OPINIONS: Application of subsection (9) [now (7)], 1926-28, p 257; giving of divine or magnetic healing treatment by unlicensed person, 1928-30, p 98; right of doctor of medicine to give chiropractic adjustments, 1930-32, p 10; person recommending diets as within exceptions, 1934-36, p 535; kind of physicians authorized to excuse pupils from physical training and issue teachers' health certificates, 1936-38, p 678; use of letters, "M.D.," 1940-1942, p 411; practice of electrolysis without license as cosmetic therapist, 1942-44, p 87; use of electrotherapy and hydrotherapy by a naturopath, 1948-50, p 42; employment of unlicensed physician in state institutions, 1948-50, p 334; use or prescription of drugs by chiropractor or naturopath, 1950-52, p 384; licensing of physical therapy technicians, 1952-54, p 30; use of term "physical therapy" by masseurs, 1956-58, p 250; medication by practical nurse or aide, 1962-64, p 433; use of diagnostic instruments in the practice of optometry, 1962-64, p 466; certification of pupil's health by chiropractic physician, (1970) Vol 35, p 141.

LAW REVIEW CITATIONS: 36 OLR 154; 49 OLR 307; 6 WLJ 602.

677.070

NOTES OF DECISIONS

This section makes it clear that this chapter does not apply to persons practicing the other healing arts. *Sutton v. Cook*, (1969) 254 Or 116, 458 P2d 402.

LAW REVIEW CITATIONS: 6 WLJ 602.

677.080

NOTES OF DECISIONS

The indictment charging the accused of practicing without a license was not required to negative the exemptions specified by 1927 c. 452 §14 [ORS 677.060]. *State v. Burroughs*, (1929) 130 Or 480, 280 P 653.

The fact that the principal witness against defendant was a detective who did not intend to take the medicine prescribed was immaterial. *State v. Lee Chue*, (1929) 130 Or 99, 279 P 285.

Costs were not recoverable by a defendant acquitted of practicing without a license. *State v. Amsden*, (1917) 86 Or 55, 166 P 942, 167 P 1014.

That the treatment was harmless was not a defense to prosecution for practicing without a license. *State v. Burroughs*, (1929) 130 Or 480, 280 P 653.

The state was not required to elect between a charge that the accused administered drugs for compensation and the charge that he undertook to cure a disease. *Id.*

ATTY. GEN. OPINIONS: License to practice naturopathy as including right to practice surgery, 1926-28, p 455; dentist as a "legally qualified physician or surgeon," 1928-30, p 326; right of chiropractor or naturopath to use words "Dr.," "Doctor" or "Physician," 1930-32, p 594; charging of fee by unlicensed person doing business as a "tea company," 1934-36, p 535; the administration of anesthetics by either a registered or practical nurse under supervision of licensed physicians and surgeons as practicing medicine, 1942-44, p 188; employment of unlicensed physician in state institutions, 1948-50, p 334; certification of pupil's health by chiropractic physician, (1970) Vol 35, p 141.

677.085

NOTES OF DECISIONS

The fact that diagnosis or treatment of a fracture constitutes the practice of medicine under this section does not make unlawful the diagnosis or treatment of a fracture by a chiropractor. *Sutton v. Cook*, (1969) 254 Or 116, 458 P2d 402.

FURTHER CITATIONS: *State v. Kuzirian*, (1961) 228 Or 619, 365 P2d 1046, 88 ALR2d 1284.

ATTY. GEN. OPINIONS: Hypnotism as practice of medicine, 1956-58, p 217; licensed masseur advertising "physical therapy", 1956-58, p 250; medical laboratory procedures as practice of medicine, 1962-64, p 324; use of diagnostic instruments in the practice of optometry, 1962-64, p 466; supervision of nurse immunizing or giving tuberculin tests, (1969) Vol 34, p 900; certification of pupil's health by chiropractic physician, (1970) Vol 35, p 141.

LAW REVIEW CITATIONS: 6 WLJ 602.

677.100

NOTES OF DECISIONS

Qualifications imposed upon applicants can be open to objection only when they are unattainable or bear no reasonable relationship to practice of the profession. *State v. Randolph*, (1892) 23 Or 74, 31 P 201.

The Act of 1889 was not unconstitutional because it permitted the licensing of persons theretofore engaged in practice without examination. *Id.*

Under a former similar statute, a practitioner was not entitled to a license when he failed to request one within the time limited. *Miller v. Medical Bd.*, (1898) 33 Or 5, 52 P 763.

Under the Act of 1889, any practitioner who complied with its requirements was licensed irrespective of his learning. *State v. Simonis*, (1901) 39 OR 111, 65 P 595.

FURTHER CITATIONS: *Barmore v. Bd. of Medical Examiners*, (1891) 21 Or 301, 28 P 8; *State v. Smith*, (1929) 127 Or 680, 273 P 343.

ATTY. GEN. OPINIONS: Right of unlicensed physician to practice as assistant to a licensed physician, 1922-24, p 738; grounds for refusing leave to take examinations, 1922-24 p 738; revocation of reciprocity license granted physician who became connected with an advertising specialist, 1924-26, p 175; citizenship as a qualification, 1924-26, p 326; training required of applicant seeking license by reciprocity, 1924-26, p 347; effect of this section on the Basic Science Act, 1938-40, p 275; similarity to statute licensing osteo-

pathic physicians, 1954-56, p 65; complying with equivalency provision, 1964-66, p 387.

LAW REVIEW CITATIONS: 36 OLR 154.

677.110

CASE CITATIONS: *Zeh v. Nat. Hosp. Assn.*, (1963) 233 Or 221, 377 P2d 852.

677.120

ATTY. GEN. OPINIONS: Reciprocity license, 1930-32, p 300; acceptability of certificate issued by national board of examiners, 1952-54, p 131.

677.180

ATTY. GEN. OPINIONS: Authority of board to include additional information in published list of licensees, 1940-42, p 251.

677.188

LAW REVIEW CITATIONS: 49 OLR 302-321; 2 EL 235.

677.190

NOTES OF DECISIONS

There is no repugnancy between the 1951 amendatory Act and the Act as it was before amended in so far as this section is concerned; no savings clause was required in the 1951 amendatory Act as to proceedings instituted prior thereto. *Board of Medical Examiners v. Buck*, (1951) 192 Or 66, 200 Or 488, 232 P2d 791, 258 P2d 124, app. dis., 346 US 919, 74 S Ct 1029, 98 L Ed 202.

"Unprofessional conduct" is an adequate standard. *Board of Medical Examiners v. Mintz*, (1963) 233 Or 441, 378 P2d 945.

Promulgation of rules specifying acts which constitute unprofessional conduct is not a condition precedent to the board's right to revoke a license. *Id.*

Unless person is charged as a physician in the indictment, the fact that the abortion is performed under the Medical Practice Act is a matter of defense. *State v. Hawkins*, (1970) 255 Or 39, 463 P2d 858.

FURTHER CITATIONS: *State v. Buck*, (1953) 200 Or 87, 262 P2d 495; *State v. Dewey*, (1956) 206 Or 496, 553, 292 P2d 799; *State v. Elliott*, (1963) 234 Or 522, 383 P2d 382.

ATTY. GEN. OPINIONS: Revocation of reciprocity license granting physician who became connected with advertising specialist, 1924-26, p 175; reinstatement of physician whose license has been revoked, 1924-26, p 208; propriety of advertisement wherein physician undertakes to effect a cure, 1924-26, p 605; revocation of license upon conviction of violating Harrison Narcotic Act, 1926-28, p 167; revocation of license upon conviction of selling narcotics, 1928-30, p 159; revocation of license upon conviction of a crime involving moral turpitude, 1928-30, p 545; revocation for conviction of crime as effected by statutes of limitation and pardon, 1928-30, p 564; advertising to obtain patients as grounds for revocation, 1958-60, p 125; liability of performing abortion without consent of husband, (1969) Vol 34, p 574.

LAW REVIEW CITATIONS: 34 OLR 192; 49 OLR 302-321; 2 EL 235.

677.200

NOTES OF DECISIONS

Under a former similar statute, the complaint charging abortion was insufficient where it omitted mention of an essential element of that offense. *Board of Medical Examiners v. Eisen*, (1912) 61 Or 492, 123 P 52. **Distinguished in** *Board of Medical Examiners v. Buck*, (1951) 192 Or 66, 200 Or 488, 232 P2d 791, 258 P2d 124, app. dis., 346 US 919, 74 S Ct 1029, 98 L Ed 202.

The right of a licensee to practice medicine is a property right which may be divested only by procedure satisfying the due process clause of the Federal Constitution. *Board of Medical Examiners v. Buck*, (1951) 192 Or 66, 200 Or 488, 232 P2d 791, 258 P2d 124, app. dis., 346 US 919, 74 S Ct 1029, 98 L Ed 202.

For the purposes of the statute of limitations an amended complaint relates back to the filing of the original. *Id.*

An applicant for reinstatement of an osteopathic license is entitled to receive written charges, notice and a hearing if board proposes to deny the application on the grounds of misconduct. *Board of Medical Examiners v. Cusick*, (1963) 234 Or 533, 383 P2d 69.

It was not error to make the state a party to a revocation proceeding in which it was alleged that the accused had committed an abortion. *State v. Estes*, (1898) 34 Or 196, 51 P 77, 52 P 571, 55 P 25.

Evidence was insufficient to warrant revocation of a license on the charge that the licensee brought about an abortion. *Board of Medical Examiners v. Eisen*, (1912) 61 Or 492, 123 P 52.

A complaint sufficiently informed the defendant of the nature of the charge against him when it charged him with performing an abortion. *Board of Medical Examiners v. Buck*, (1951) 192 Or 66; 200 Or 488, 232 P2d 791, 258 P2d 124, app. dis., 346 US 919, 74 S Ct 1029, 98 L Ed 202.

The Board of Medical Examiners can permit the amending of a complaint in the proper case. *Id.*

There was no evidence to support the action of the board. *Board of Medical Examiners v. Cusick*, (1963) 234 Or 533, 383 P2d 69.

677.208

NOTES OF DECISIONS

1. Under former similar statute

An attorney who executed a notice of appeal on behalf of the board was presumed to have been duly authorized to do so. *State v. Estes*, (1898) 34 Or 196, 51 P 77, 52 P 571, 55 P 25.

Notice of appeal to the board was unnecessary if the state had been made a party and service had upon it. *Id.*

The duty of filing the record in the circuit court rested

upon the secretary, and the accused was not responsible for his delinquency therein. *Id.*

A court having jurisdiction of an appeal did not lose it by submitting to a jury the propriety of the order. *State v. Dean*, (1928) 123 Or 537, 262 P 936.

"Legal evidence" as used in this section meant substantial evidence. *Board of Medical Examiners v. Mintz*, (1963) 233 Or 441, 378 P2d 945.

An applicant for reinstatement of an osteopathic license was entitled to receive written charges, notice and a hearing if board proposed to deny the application on the grounds of misconduct. *Board of Medical Examiners v. Cusick*, (1963) 234 Or 533, 383 P2d 69.

FURTHER CITATIONS: *Barmore v. Bd. of Medical Examiners*, (1891) 21 Or 301, 28 P 8; *Miller v. Medical Bd.*, (1898) 33 Or 5, 52 P 763; *Board of Medical Examiners v. Buck*, (1954) 200 Or 488, 258 P2d 124.

ATTY. GEN. OPINIONS: Appeal from order generally, 1936-38, p 130.

677.235

CASE CITATIONS: *State v. Lee Chue*, (1929) 130 Or 99, 279 P 285.

ATTY. GEN. OPINIONS: Validity of restricting appointments to nominees of unofficial group, 1964-66, p 178; board as self-supporting regulatory agency outside Department of Commerce, (1971) Vol 35, p 504.

677.265

CASE CITATIONS: *Miller v. Medical Bd.*, (1898) 33 Or 5, 52 P 763.

ATTY. GEN. OPINIONS: Authority of board to institute proceedings for violation of statute, 1936-38, p 397; authority and duties of special counsel, 1938-40, p 164; powers of a special agent appointed by the board as limited to the language of this section, 1944-46, p 166.

677.280

ATTY. GEN. OPINIONS: Allowance of additional salary to secretary for conducting examinations, 1922-24, p 154.

677.290

ATTY. GEN. OPINIONS: Authority of board to expend funds for advertising, 1922-24, p 738; board as self-supporting regulatory agency outside Department of Commerce, (1971) Vol 35, p 504.