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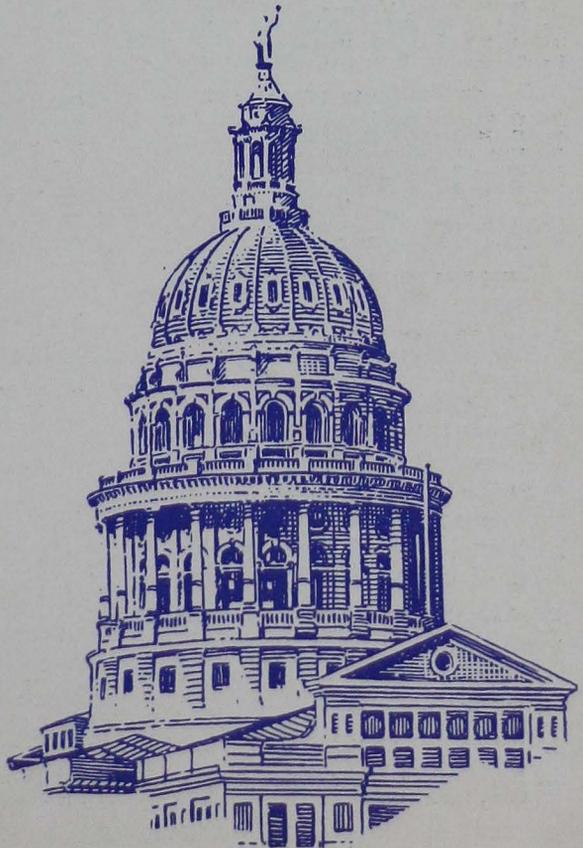
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Texas Association of Osteopathic Physicians and Surgeons

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NUMBER 1

PRESERVE THIS RECORD

Into the foundations of all successful organizations go the enduring building blocks of worthy purpose, high ideals, a selfless spirit of cooperation and unflinching honesty in conduct. We all know that these building stones have been fashioned literally by the hands of those few men that persistently consider the success of the cause to be vastly more important than the convenience of the individual.

Consider for a moment the tremendous achievements of those pioneers in osteopathy who by sheer determination and raw courage established the osteopathic profession as a distinct school of the healing arts upon the statute books of the state. One is reminded of the time-worn expression: "That was when men were men!" The history of those accomplishments is all but forgotten and would indeed be totally lost but for the recording of contemporary publications. They constitute the archives of our heritage.

The work of osteopathic organization for public welfare could not die with the pioneers, but is carried on by the blood, sweat and tears of their successors, still today as in bygone years, a small group of determined workers. It is the purpose of this issue of the JOURNAL to record the activities of a segment of that group, the Public Health Committee of the Texas Association of Osteopathic Physicians and Surgeons. It is intended to serve both as a history of an Association effort and as a source of information and future guidance for osteopathic physicians in the state.

It is the sincere hope of the authors of this issue that you will read it carefully and then preserve it for ready reference at a future date. No record of this kind could adequately describe the personal expenditures of time, money and health unstintingly paid by the men who carried out their self-assigned duties. Few of us would have stood such loss without complaint; loss dedicated to the protection and profit, not of the losers, but of all. Do not underestimate the value of such men, for without them no organizational objective is achieved, no goal attained.

Read well, feel proud and preserve this record.

The Texas Medical Practice Act

Dr. J. L. Love

The Texas Medical Practice Act is based upon a provision of the constitution enacted in 1876. Tradition says that a homeopathic physician, fearing legislative domination by the allopathic school of medicine, wrote and succeeded in getting passed, Article 16, Section 31 of the constitution, which reads as follows:

"The legislature may pass laws describing the qualifications of practitioners of this state, and to punish persons for malpractice, but no preference shall ever be given by law to any school of medicine."

Under the police power of the state the legislature has the duty of protecting the public health which includes the regulation of the right to practice medicine. The wisdom of this constitutional provision is indicated by the fact that it has never been amended nor changed in any way since its enactment. All medical legislation since that date has been interpreted with this provision in mind.

The first medical practice act was passed on August 21, 1876 and by Article 3778 of Sayles, Texas Civil Statutes (1898) Vol. 21, provided:

"The Board of Medical Examiners shall be composed of not less than three practicing physicians of known ability, and who are graduates of some medical college recognized by the American Medical Association, and who are residents of the district for which they are appointed."

The act further provided that the presiding judges of the district court of the several judicial districts should appoint the boards of medical examiners for their respective districts and in turn they could give the examinations for licensure. In 1901 a new act was passed by the legislature and this act provided for three separate boards, the allopathic, homeopathic and eclectic. Each of the different boards administered the provisions of the Medical Practice Act with respect to their practitioners and the qualifications and rights of all the practitioners licensed by these three different boards were identical.

In 1907 the Medical Practice Act enacted in 1901 was repealed and a new act was passed. The 1907 act provided for one board of medical examiners and contained the following limitation upon the different schools of medicine: "no school shall have a majority representation on said Board".

Article 16, Section 31 of the Texas Constitution is a unique provision, as was stated in the case of *Ex Parte W. B. Halstead*, 182, S.W. (2d) 4791 (1944), page 485:

"In this state, however, the authority of the legislature to enact legislation touching the practice of medicine, or the healing arts, has been expressly limited by the constitution, in Art. 16, Sec. 31 thereof, heretofore mentioned. No similar constitutional provision, in any of the states where the validity of legislation authorizing the practice of chiropractic has been sustained have been called to our attention. Hence, the fact that other states of the union have authorized the practice of chiropractic as

an independent field of endeavor and as being outside the field of the practice of medicine, is of little consequence here. This act must be construed in the light of our constitution."

The court, in the Halstead case (Supra), went on to say in regard to the non-preference clause of Article 16, Section 31 of the Texas Constitution on p. 487:

"Said section is a part of the constitution of 1876, and has remained unchanged through the years. It is and has been the basis upon which has rested the legislative control over, and the definition of, the practice of medicine. It furnishes the direct reason why the courts have steadfastly held that, if one treats or offers to treat as a business, profession, or avocation, diseases or disorders of the human body by any method, systems, or means — he must first qualify himself to do so by taking the same examination that is required of all others doing the same thing, regardless of the system employed. Not only was such interpretation authorized, but same was required by that provision of said Art. 16, Sec. 31, which says that 'no preference shall ever be given by law to any school of medicine'. The term 'schools of medicine' as here used, means and has reference to the system, means or method employed or the school of thought accepted by the practitioner."

The constitution is the controlling instrument in interpreting legislation enacted.

OSTEOPATHY IS THE PRACTICE OF MEDICINE

Shortly after the enactment of the new medical practice act in 1907, the question arose as to whether osteopathy was the practice of medicine within the meaning of the Texas constitution. An osteopathic physician was convicted in Texas of practicing medicine without a license as required by the Medical Practice Act in the case of *Ex Parte Collins*, 121, S.W. 501 (1909). The defendant in this case admitted that the terms of the statute were broad enough to include his offense as charged. However, he contended that the constitutional provision limits the power of the legislature to the regulation of the practice of medicine and that osteopathy was not the practice of medicine. The court help upon appeal from the lower court which tried the case that osteopathy was within the meaning of the constitutional provision and was thus subject to regulation. The court said on page 593:

"The constitution, when it demands the regulation of the practice of medicine, was not attempting to say that the legislature was limited to any mode or method of healing in order to regulate it, but the word 'medicine' used in the Constitution means the art of healing by whatever scientific or supposedly scientific method may be used. It means the art of preventing, curing or alleviating diseases and remedying, as far as possible, results of violence and accidents. It further means something which is supposed to possess, or some method which is supposed to possess, curative powers."

Upon appeal to the United States Supreme Court the decision of the Texas Court of Criminal Appeals was affirmed. The United States Supreme Court said in *Collins v. Texas* 223, U.S. 288 (1912) in affirming the Texas decision on page 296:

"It is true that he does not administer drugs, but he practices what at least purports to be the arts. The state constitutionally may prescribe

conditions to such practice considered by it to be necessary or useful to secure competence in those who follow it. We should presume, until the Texas courts say otherwise, that the reference in Section 4 to the diploma of reputable and legal colleges of medicine and the confining in Section 7 of examinations to graduates of reputable medical schools, use the words 'medicine' and 'medical' in the same broad sense as Section 13, and that the diploma of the plaintiff would not be rejected merely because it came from a school of osteopathy. In short, the statute says that if you want to do what it calls practicing medicine you must have gone to a reputable school in that kind of practice. Whatever may be the osteopathic dislikes of medicines, neither the school nor the plaintiff in error suffers a constitutional wrong if his place of tuition is called a medical school by the acts for the purpose of showing that it satisfies the statutory requirements."

Thus, both the Texas Court of Criminal Appeals and the United States Supreme Court held that osteopathy was included within the phrase "school of medicine" in the Texas constitution and the term "practice of medicine" as used in the Medical Practice Act of 1907 which is still in effect.

Later the Texas Court of Criminal Appeals in the case of Newman v. State, 124, N.W. 956 reaffirmed the decision in *Ex Parte Collins* (Supra) and construed the opinion in the latter case as follows on page 956:

"We there held that the word 'medicine'; as used in the constitution, embraced the art of healing by whatever scientific or supposedly scien-

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tific method, the art of preventing, curing or alleviating disease and remedying as far as possible results of violence and accident and that it was broad enough to include any method that was supposed to possess curative powers and authorized the passage of the act in question declaring physicians and surgeons, including osteopathy, to obtain a license before engaging in the practice of their profession."

Furthermore, in the case of Hayman v. City of Galveston, 273, U.S. 414, the Supreme Court of the United States said on page 417:

"Under the Texas constitution and statutes any one who shall 'offer to treat any disease or disorder, mental or physical, or to effect cures thereof' is a physician and may be admitted to practice within the state."

Thus, both the Court of Criminal Appeals of Texas and the United States Supreme Court have ruled that osteopathy is the practice of medicine within the meaning of the Texas constitution and also within the meaning of the Medical Practice Act of Texas.

Furthermore, not only have the Texas court and the United States Supreme Court recognized the rights of osteopathic physicians to be included within the terms of the Medical Practice Act, but also the Attorney General of Texas in an opinion dated August 15, 1907, construing the Medical Practice Act of 1907 stated:

"I understand that this definition of 'practicing medicine' includes within its term that class of practitioners known as Osteopaths. Being included within the definition of the term, they are eligible to be appointed upon the Board of Medical Examiners."

Thus, for more than forty years osteopathic physicians along with the practitioners of other schools of medicine have been licensed under the terms of the Medical Practice Act. They have possessed the complete right to practice medicine and surgery and have exercised the same rights and been subject to the same duties as the physicians of the other schools of medicine.

TEXAS MEDICAL PRACTICE LAW

The foregoing history of the regulation of medicine in the State of Texas is taken from an opinion rendered to the Public Health Committee by attorneys for the American Osteopathic Association. It is readily seen from this history and from the act itself quoted below that the Texas Medical Practice Act is really a basic science act which examines in all the basic sciences as well as in the clinical subjects. The handbook of information published by the Texas State Board of Medical Examiners has the following to say concerning the type of law and standards for all practitioners:

"ONE LAW AND ONE STANDARD FOR ALL PRACTITIONERS. Regardless of the system or method of practice adopted, identical qualifications are required of all applicants for examination for license to practice medicine in Texas; all get the same identical questions (without questions on the use of drugs, nor on treatment, except such conditions as are managed alike by all systems of practice) shall be given to all examinees in the same room and at the same time; and all successful examinees, regardless of method of practice, get the same license authorizing them to practice MEDICINE AND SURGERY in Texas and

use any treatment or means of giving relief to suffering human beings not prohibited by the criminal statutes. The Texas Medical Practice Act is the fairest regulatory medical law ever written. It was designed for one purpose only—protection of the health and the lives of the people of Texas and it should be speedily and consistently enforced.

THE REQUIREMENTS FOR ADMISSION TO EXAMINATION FOR LICENSE

ARTICLE 4501. "All applicants for license to practice medicine in this state not otherwise licensed under the provisions of law must successfully pass an examination by the Board of Medical Examiners. The Board is authorized to adopt and enforce rules of procedure not inconsistent with the statutory requirements. Applicants to be eligible for examination must be CITIZENS OF THE UNITED STATES AND MUST PRESENT SATISFACTORY EVIDENCE TO THE BOARD THAT THEY ARE MORE THAN 21 YEARS OF AGE, OF GOOD MORAL CHARACTER, WHO HAVE COMPLETED SIXTY (60) SEMESTER HOURS OF COLLEGE COURSES, OTHER THAN IN A MEDICAL SCHOOL, WHICH COURSES WOULD BE ACCEPTABLE, AT THE TIME OF COMPLETING SAME, TO THE UNIVERSITY OF TEXAS FOR CREDIT ON A BACHELOR OF ARTS DEGREE OR A BACHELOR OF SCIENCE DEGREE, AND WHO ARE GRADUATES OF BONAFIDE REPUTABLE MEDICAL SCHOOLS. A REPUTABLE MEDICAL SCHOOL SHALL MAINTAIN A COURSE OF INSTRUCTION OF NOT LESS THAN FOUR (4) TERMS OF EIGHT (8) MONTHS EACH; SHALL GIVE A COURSE OF INSTRUCTION IN THE FUNDAMENTAL SUBJECTS NAMED IN ARTICLE 4503 OF THE REVISED CIVIL STATUTES OF TEXAS OF 1925, AS AMENDED BY THIS ACT; AND SHALL HAVE THE NECESSARY TEACHING FORCE, AND POSSESS AND UTILIZE LABORATORIES, EQUIPMENT AND FACILITIES FOR PROPER INSTRUCTION IN THE SAID SUBJECTS."

"Applications for examination must be made in writing, verified by affidavit, and filed with the Secretary of the Board, on forms prescribed by the Board, accompanied by a fee of \$25.00. All applicants shall be given due notice of the date and place of such examination. Provided further that ALL STUDENTS REGULARLY ENROLLED IN MEDICAL SCHOOLS WHOSE GRADUATES ARE NOW PERMITTED TO TAKE THE MEDICAL EXAMINATION NOW PRESCRIBED BY LAW IN THIS STATE SHALL UPON COMPLETION OF THEIR MEDICAL COLLEGE COURSE BE PERMITTED TO TAKE THE EXAMINATION PRESCRIBED HEREIN.

"If any applicant, because of failure to pass the required examination, shall be refused a license, he or she, at such times as the Board of Medical Examiners may fix, shall be permitted to take a subsequent examination as the Board may prescribe, upon the payment of such part of Twenty-five Dollars (\$25.00) as the Board may determine and state. In the event satisfactory grades shall be made in the subjects prescribed and taken on such re-examination, the Board may grant to the applicant a license to practice medicine."

"The Board shall determine the credits to be given examinees on the answers turned in on the subjects of the complete and the partial examina-

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tion, and its decision thereupon shall be final."

SECTION 4. *"That Title 71, Chapter 6, Article 4503, of the Revised Civil Statutes of Texas, 1925, be amended as to hereafter read as follows—:*

"Article 4503. All examinations for license to practice medicine shall be conducted in writing in the English language, and in such manner as to be entirely fair and impartial to all individuals and to every school or system of medicine. All applicants shall be known to the examiners only by numbers (drawn from a hat on entering the examination room for the first test) without names or other method of identification on examination papers by which members of the Board may be able to identify such applicant or examinees, until after the general averages of the examinees' numbers in the class have been determined, and license granted or refused. Examinations shall be conducted on Anatomy, Physiology, Chemistry, Histology, Pathology, Bacteriology, Diagnosis, Surgery, Obstetrics, Gynecology, Hygiene, and Medical Jurisprudence. Upon satisfactory examination conducted as aforesaid under the rules of the Board, applicants shall be granted license to practice medicine. All questions and answers shall be preserved in the executive office of the Board for one year. All applicants examined at the same time shall be given identical questions. All certificates shall be attested by the seal of the Board, and signed by all members of the Board, or a quorum thereof. The Board may in its discretion give examinations for license in two (2) parts. The first part shall include such of the required scientific branches of medicine above mentioned as may be prescribed by

the Board. The second, or final, part of the examination shall not be given until the applicant has graduated and has received a diploma from a reputable medical college, as the term 'reputable medical college' is defined in Article 4501 of the Revised Civil Statutes of Texas of 1925, as amended by the Act."

"The Board may in its discretion admit to partial examination applicants who have successfully completed the work of the first two (2) years of the college course required of licentiates. The application for partial examination must be in writing, accompanied by an affidavit made by the dean, or registrar, or a reputable medical college within the meaning of the law, showing that the applicant has successfully completed the work of the first two (2) years of said course, and by a fee of Fifteen Dollars (\$15). The Board may prescribe all other prerequisites of such application. No license shall be granted to any applicant who has successfully passed such partial examination until all legal requirements for granting license have been complied with. All partial examinations must be conducted in the same manner and under the same rules prescribed for complete, or full, examination. The fee for the second or final examination shall be Twenty-five Dollars (\$25)."

WHO SHALL BE REGARDED AS PRACTICING

ARTICLE 4510—(5745). Any person shall be regarded as practicing medicine within the meaning of this law: 1. Who shall profess to be a physician or surgeon, and **SHALL TREAT OR OFFER TO TREAT ANY DISEASE OR DISORDER**, mental or physical, or any physical deformity or injury, **BY ANY SYSTEM OR METHOD**, or to **EFFECT CURES THEREOF**;

2. Or who shall treat or offer to treat any disease or disorder, mental or physical, or any physical deformity or injury, by any system or method, or to effect cures thereof, and **CHARGE THEREFOR, DIRECTLY OR INDIRECTLY, MONEY OR OTHER COMPENSATION.**"

DEFINITION OF THE TERMS PHYSICIAN, SURGEON, PRACTITIONER

ARTICLE 4511—(5746) "The terms 'Physician and Surgeon,' as used in this law, shall be construed as synonymous, and the terms 'Practitioner,' 'Practitioners of medicine' and 'Practice of medicine,' as used in this law, shall be construed to refer to and include Physicians and Surgeons."

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The Basic Science Bill

DR. P. R. RUSSELL

DR. G. J. LUIBEL

The Public Health Committee of the Texas Association of Osteopathic Physicians & Surgeons defended the Medical Practice Act during the 1947 session of the State Legislature in the face of the most determined attempt to change the law that has been seen thus far. We will endeavor to show the claims made by the proponents of the proposed new laws and why their claims could not be substantiated. We will also give you the editorial reaction in the public press.

The Texas Medical Association led the fight for new legislation when it sponsored Senate Bill No. 35 (Basic Science Bill) and Senate Bill No. 115 (proposed new Medical Practice Act). Most of the controversy raged over the Basic Science Bill, as this was designed as the opening wedge to undermine the present practice act. Senate Bill No. 115 was kept pretty much in the background so that the complete purpose of the medical group would not be too openly revealed.

Following are the essential provisions of the Basic Science Bill excerpted from H. B. No. 138:

A BILL

TO BE ENTITLED

An Act to establish a State Board of Examiners in the Basic Sciences; providing for its appointment and organization and defining its powers; defining the healing arts; making certification by the State Board of Examiners in the Basic Sciences a prerequisite to eligibility for examination for license to practice the healing arts; establishing eligibility requirements for certification by the Board of Examiners in the Basic Sciences; fixing fees to be paid and providing compensation and expenses of the Board of Examiners in the Basic Sciences; providing for appeals from action by the Board; defining and prohibiting fraudulent and void certificates and licenses and establishing procedures for their revocation and cancellation; providing penalties for practicing any branch of the healing art without a valid certificate from the State Board of Examiners in the Basic Sciences; providing penalties for obtaining or attempting to obtain a certificate in the Basic Sciences by unlawful means; providing penalties for bribing, attempting to bribe, accepting a bribe, or agreeing to accept a bribe under this law; providing methods of enforcement of this Act; enumerating exceptions and exemptions under this Act; amending Chapter 6, Title 12 of the Penal Code of Texas by adding Articles 742-a, 742-b, 742-c, 744-a, and 744-b; amending Chapter 1, Title 5 of the Penal Code of Texas by adding Articles 160-a and 160-b; providing that if any section, part of a section or provision of this Act is held to be unconstitutional such holding shall not affect the validity of the remaining portions of this Act; providing for non-repeal of existing medical licensure laws; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. *Basic Science Certificate Required.*

No person shall be permitted to take an examination for a license to practice the healing art or any branch thereof, or be granted any such license, unless he has presented to the board or officer empowered to issue such a license as the applicant seeks, a certificate of proficiency in anatomy, physiology, chemistry, bacteriology, pathology, and hygiene and public health, hereinafter referred to as the basic sciences, issued by the State Board of Examiners in the Basic Sciences.

SEC. 2. *The Healing Art Defined.*

For the purpose of this Act, the healing art includes any system, treatment, operation, diagnosis, prescription or practice for the ascertainment, cure, relief, palliation, adjustment or correction of any human disease, ailment, deformity, injury or unhealthy or abnormal physical or mental condition.

SEC. 3. *Board of Examiners.*

The Governor, within thirty (30) days after this Act takes effect, shall appoint a State Board of Examiners in the Basic Sciences, hereinafter referred to as the Board, consisting of six (6) members. Of the members first appointed, two (2) shall serve for a term of two (2) years, or until their successors shall be appointed and qualified; two (2) shall serve for a term of four (4) years, or until their successors shall be appointed and qualified; and the remaining two (2) members shall serve for a term of six (6) years, or until their successors shall be appointed and qualified. Thereafter at the expiration of the term of each member of the Board first appointed, his successor shall be appointed by the Governor for, and shall serve for, a term of six (6) years, or until his successor shall be appointed and qualified. On the death, resignation or removal of any member, the Governor shall fill the vacancy by appointment for the unexpired portion of the term. Every member shall serve until his successor is appointed and qualified. The members of the Board shall be selected because of their knowledge of the basic sciences named in this Act, and each member shall be a professor, or an assistant or associate professor or an instructor on the faculty of the University of Texas, the Agricultural and Mechanical College of Texas, the Texas Technological College, Baylor University, Southern Methodist University, Texas Christian University, St. Edwards University, Rice Institute, Southwestern University, or any other institution or college located within the State of Texas of equal academic standing and facilities for instruction. Each member shall have resided in the State of Texas not less than one year next preceding his appointment. No member of the Board shall be actively engaged in the practice of the healing art or any branch thereof.

SEC. 5. *Fees Payable by Applicants.*

The fee for examination by the Board shall be Fifteen Dollars (\$15). The fee for re-examination within a twelve-month period shall be Ten Dollars (\$10), but the fee for re-examination after the expiration of twelve (12) months shall be the same as the original fee. The fee for

the issue of a certificate by authority of reciprocity, on the basis of qualifications as determined by the proper agency of some other State, Territory, or the District of Columbia shall be Twenty-five Dollars (\$25). All fees shall be paid to the Board by the applicant when he files his application. The Board shall pay all money received as fees into the State Treasury, where such money will be placed in a special fund to be known as "The Basic Science Examination Fund." All money so received and placed in such fund shall be used by the Board of Examiners in the Basic Sciences in paying its compensation and defraying its expenses, and in administering, enforcing and carrying out the provisions of the law. The Board may hire such employees as are necessary in carrying out the provisions of this law. The State Treasurer shall pay out of the fund the compensation of and expenses incurred by the Board on warrants based upon vouchers signed by the President and the Secretary of the Board.

SEC. 6. Examinations.

The Board shall conduct examinations at such times and places as it deems best, provided, however, that the first examination shall be held within six (6) months from the effective date of this Act, and one (1) examination shall be held during each period of six (6) months thereafter. Every applicant, except as hereinafter provided, shall be examined to determine his knowledge, ability and skill in the basic sciences. The examinations shall be conducted in writing. If the applicant receives a credit of seventy-five per cent (75%) or more in each of the basic sciences, he shall be considered as having passed the examination. If the applicant receives less than seventy-five per cent (75%) in one (1) subject and receives seventy-five per cent (75%) or more in each of the remaining subjects, he shall be allowed a re-examination at the examination next ensuing, on application and the payment of the prescribed fee, and he shall be required to be re-examined only in the subject in which he received a rating less than seventy-five per cent (75%). If the applicant receives less than seventy-five per cent (75%) in more than one (1) subject, he shall not be re-examined unless he presents proof, satisfactory to the Board, of additional study in the basic sciences sufficient to justify re-examination, and shall then be re-examined in all subjects.

It is the intent of this Act that the examinations given shall be similar in their nature and extent to examinations given in the above named subjects to students completing their second year in any of the colleges or universities named above, from which board members are appointed.

SEC. 7. Requirements for Certificate.

No certificate shall be issued by the Board unless the person applying for it submits evidence, satisfactory to the Board, (1) that he is a citizen of the United States; (2) that he is not less than nineteen (19) years of age; (3) that he is a person of good moral character; (4) that before he began the study of the healing art he was graduated by a high school accredited by the State Committee on Classified and Accredited Schools, or a school of equal grade, or that he possesses educational qualifications equivalent to those required for graduation by such an accredited high

school; and (5) that he has a comprehensive knowledge of the basic sciences as shown by his passing the examination given by the Board, as by this Act required. This shall not be construed to prevent the issue of certificates under the provisions of Section 8 of this Act.

SEC. 8. Reciprocity.

The Board may in its discretion waive the examination required by Section 7, when proof satisfactory to the Board is submitted, showing (1) that the applicant has passed in another State, Territory, or the District of Columbia an examination in the basic sciences before a board of examiners in the basic sciences; (2) that the requirements of that State, Territory, or District of Columbia are not less than those required by this Act as a condition precedent to the issue of a certificate; and (3) that the board of examiners in the basic sciences in that state, Territory, or District of Columbia grants like exemption from examination in the basic sciences to persons holding certificates from the State Board of Examiners in the Basic Sciences in Texas; (4) that the applicant show satisfactory proof that he is a citizen of the United States.

SEC. 16. Exceptions.

The provisions of this Act do not apply to dentists, duly qualified and registered under the laws of this State, who confine their practice strictly to dentistry, or those persons under the jurisdiction of the Texas State Board of Dental Examiners; nor to duly licensed optometrists who confine their practice strictly to optometry as defined by statute; nor to nurses who practice nursing only; nor to duly licensed chiropodists, who confine their practice strictly to chiropody as defined by statute; nor to masseurs in their particular sphere of labor; nor to commissioned or contract surgeons of the United States Army, Navy or Public Health and Marine Hospital Service, in the performance of their duties, and not engaged in private practice; nor legally qualified physicians of other states called in consultation, but who have no office in Texas, and appoint no place in this State for seeing, examining or treating patients. The Basic Science Law shall not affect or limit in any way the application or use of the principles, tenets or teachings of any church in the ministration to the sick or suffering by prayer, without the use of any drug or material remedy, provided sanitary and quarantine laws and regulations are complied with, and provided further that all those so ministering or offering to minister to the sick or suffering by prayer shall refrain from maintaining offices, except for the purpose of exercising the principles, tenets, or teachings of the church of which they are bona fide members; nor shall the Basic Science Law apply to persons licensed to practice the healing art, or any branch thereof, in the State of Texas when this Act shall take full force and effect; nor shall the Basic Science Law apply to any Chiropractor who is a graduate of a reputable Chiropractic College in the United States and who has practiced Chiropractic for three (3) years immediately preceding the effective date of this Act and who has resided in Texas for two (2) years immediately preceding the effective date of this Act and who has never had a

license to practice any branch of the healing art cancelled by any American or Canadian state, province, or territory.

The present law governing the practice of medicine in the State of Texas is one of the best laws in the country and is essentially a Basic Science Law. It has proven adequate since 1907 to license all physicians desiring to practice in Texas, but is flexible enough to cover the advances made in medical science and representative enough to include all groups desiring to practice under it. The act has been tested in all of the courts of Texas and has been upheld by the United States Supreme Court. Naturally, as a profession we were not willing to discard a standard of this calibre and accept in its stead a legal whip which would give the allopaths domination of our doctors in matters of examination and which would open the way to restricting our practice rights. There was no objection on our part to properly conducted examinations in the basic science subjects since osteopathic physicians have been writing these examinations before the Board of Medical Examiners since 1907, but we must insist that any Basic Science Bill should be fair and meet the following requirements:

1. Administration. The law shall be administered by a Board composed of the following:
 - a. A representative of each of the recognized branches of the healing arts.
 - b. A representative of the general public.
 - c. A representative of an educational institution.
2. Applications. Applicants for a certificate in the basic sciences shall be required and permitted to disclose only their names, ages and addresses.
3. Basic Sciences. The following sciences shall be regarded as basic sciences.
 - a. Chemistry.
 - b. Anatomy.
 - c. Physiology.
 - d. Bacteriology.
 - e. Pathology.
4. Examinations. The law shall provide that examinations shall be conducted as follows:
 - a. Personnel shall be employed to provide an examination to be approved by the Board and administered under its supervision.
 - b. The examination may be written upon a student's completing his basic science studies.
 - c. From the time of a person's application to take the examination until he has finally been accepted or rejected, the name of an applicant shall not be disclosed to the members of the Board.
 - d. The law must provide for the reconsideration by the entire Board of the examination of any applicant who has failed.
5. The law shall provide that a Basic Science certificate shall be a prerequisite to licensure in all of the healing arts.
6. The law must contain a provision that licensing Boards in the various healing arts shall not be permitted to re-examine an applicant in basic science subjects.

Naturally, since Senate Bill No. 35 did not meet the above specifications for a good, true Basic Science Bill we opposed it, and aside from its objectives, the

profession must realize that the most dangerous features were the hidden designs and intentions of the medical profession to make this Basic Science law the basic medical law of the state, thus satisfying the constitutional provision that there shall be no discrimination between the various schools of practice. Having thus satisfied the constitutional provision, the proponents of basic science hoped to be the sole possessors of unlimited practice rights in Texas through the enactment of Senate Bill No. 115. Some of the claims and arguments advanced in favor of Senate Bill No. 35 are listed below along with the true facts with which we answered them.

The allopaths claimed that the Basic Science Bill would:

1. Raise the standards of medical service because it would insure adequate education in the basic sciences.

Answer: Senate Bill No. 35 would lower the standards for medical education in requiring only a high school diploma instead of the present two years of pre-professional college credits now required of all physicians seeking a license from the present Board of Medical Examiners.

2. Be a fair test because the examiners would be college professors who were not engaged in the practice of medicine.

Answer: The ordinary colleges in the state do not teach all of the subjects required in the bill and could not furnish examiners from their faculties. Those they could furnish are not necessarily educated in premedical type of basic sciences for medical education. The remaining examiners would have to come from medical schools and thus be under allopathic domination. No other healing profession was represented on the Board.

3. That the examinations could not be unreasonable because they could be passed by a high school graduate. (Senator Tynan, who sponsored the bill, was quoted in the *San Antonio Express* as saying that a six weeks' review was adequate preparation for high school students.)

Answer: These subjects are not available in high school curriculums and most colleges do not teach all of them. We know of no colleges in the state that give adequate courses in all of the proposed basic science subjects. Actually, only a second-year medical student would be familiar with them. To force medical students to take two examinations in the same subjects is to put them to needless expense and jeopardy in securing a license to practice when the state is short of doctors now.

We point out also inadequate provision for reciprocity with other states as well as the public admission by the Medical Association attorney that present unlicensed practitioners probably could not be compelled to write basic science examinations.

In House Bill 138, the Basic Science bill, your particular attention is called to the following excerpts:

*** *"defining the healing arts; making certification by the State Board of Examiners in the Basic Sciences a prerequisite to eligibility for examination for license to practice the healing arts; establishing eligibility requirements for certification by the Board of Examiners in the Basic Sciences; ****

*** "a certificate of proficiency in anatomy, physiology, chemistry, bacteriology, pathology, and hygiene and public health, hereinafter referred to as the basic sciences, issued by the State Board of Examiners in the Basic Sciences.

SEC. 2. *The Healing Art Defined.*

For the purpose of this Act, the healing art includes any system, treatment, operation, diagnosis, prescription or practice for the ascertainment, cure, relief, palliation, adjustment or correction of any human disease, ailment, deformity, injury or unhealthy or abnormal physical or mental condition."

*** "The members of the Board shall be selected because of their knowledge of the basic sciences named in this Act, and each member shall be a professor, or an assistant or associate professor***"

*** "No member of the Board shall be actively engaged in the practice of the healing art or any branch thereof."

*** "If the applicant receives less than 75 per cent in more than one subject, he shall not be re-examined unless he presents proof, satisfactory to the Board, of additional study in the basic sciences sufficient to justify re-examination, and shall then be re-examined in all subjects."

Note also the provisions in Section 7 for requirements for certificate and in Section 8 for reciprocity.

As mentioned above, Senate Bill No. 115 was never in the limelight to the extent that Basic Science was, but we would like you to read the following excerpts from this bill and reflect on what chance you would have with the kangaroo court your medical friends have allotted to their own administration.

*** "defining those regarded as practicing medicine; defining the terms 'physician' and 'surgeon' as used in this Act; defining term 'Board' as used in this Act; providing for the Texas State Board of Medical Examiners ***"

SECTION 1. *Unlawful to Practice Medicine Without a Valid Registered License.*

*It shall be unlawful for any one to practice medicine under the provisions of this Act upon human beings within the limits of this state who has not registered in the District Clerk's office of every county in which he may reside, and in each and every county in which he may maintain an office or may designate a place for meeting, advising with, treating in any manner, or prescribing for patients, a valid license to practice medicine in Texas, as authorized by this Act, ***"*

*** "No writing purporting to be a license to practice medicine in Texas shall be admissible in evidence in any Court unless it shall appear to the trial court that the same is, in fact, a valid and unrevoked license to practice medicine, duly and lawfully issued.

SEC 3. *Who Regarded as Practicing Medicine.*

Any person shall be regarded as practicing medicine with meaning of this Act:

1. *Who shall publicly profess to be a physician or surgeon and treat, or offer to treat, diagnose or offer to diagnose, any disease, disorder, mental or physical, or any physical deformity or injury by any method, or to effect cures thereof;"*

SEC. 4. *Definition of Physician and Surgeon.*

"The terms 'physician' and 'surgeon,' as used in this Act, shall be construed as synonymous, and the terms 'practitioners of medicine' and 'practice of medicine,' as used in this Act, shall be construed to refer to and include licensed physicians and surgeons authorized to practice medicine as prescribed by this Act."

"It shall be the duty of the Board to take into its possession and preserve all the records and writings now in existence pertaining to the Medical Practice Act and in possession of the present Texas Board of Medical Examiners and all future records and documents of the Board, and it shall have full power and authority to do so."

**** . . . or a Bachelor of Science Degree, and who are graduates of bona fide, reputable medical schools, within the meaning of this Act, and must file with the Board a certificate of proficiency in the basic sciences issued by the State Board of Examiners in the Sciences of this State."*

"No school of medicine shall be deemed reputable unless and until it shall be so classified by the Board, and the Board shall have authority and it is hereby made its duty to so act. All classifications shall be based upon evidence deemed sufficient by the Board. Classifications otherwise made shall be without effect."

In making such classification the Board may act upon any evidence introduced before it, including the personal knowledge and testimony of its members or any of them, or upon reports of inspectors appointed by the Board to make such examinations, inquiries and reports. The Board may specify and direct."

**** "Neither shall any provisions of this Act apply to dentists qualified and registered under the laws of this state, who confine their practice strictly to dentistry; nor to duly licensed optometrists, who confine their practice strictly to optometry as defined by statute; nor to osteopaths, who publicly profess to be osteopaths and confine their practice strictly to osteopathy as the same may be hereafter defined and authorized by law; nor to chiropractors, who publicly profess to be chiropractors and confine their practice strictly to the principles and methods of chiropractic as the same may be hereafter defined and authorized by law.***"*

"The District Courts of this State shall have the right to revoke, annul, or suspend the license of any practitioner of medicine upon

of the violation of the law in any respect in regard thereto, or for any cause for which the Texas State Board of Medical Examiners are authorized to refuse to admit persons to its examinations, as provided by this Act. ***"

With the foregoing in mind the Public Health Committee opposed both of these proposed laws in the House and Senate. This involved a continuous process of discussing all of these factors with the legislators of both Houses, not only before the Committees in public hearings, but privately with individual members. This was a tedious and at times a discouraging procedure because of the many other demands occupying the time of these people, and unfortunately, many were so firmly committed to the medical cause that their minds were made up before they had even read the bills.

However, in general, we have been convinced that the majority of the legislators desire to be fair-minded in issues of this kind and we were heartened by their courtesy and the patience with which they listened to our problems. This was especially true in the Senate where we concentrated our defense. All in all, we feel that we have made new friends both in and out of public office. As is usual, the dark clouds are not without some silver lining and the gradual opposition that developed in the press to a monopolistic control over the healing arts, shows once again the manner in which these public educational drives accrue to the benefit of the public in affording the opportunity to learn of osteopathic health services.



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Comments

In the Public P



Below are excerpts from editorials and letters printed in various Texas newspapers expressing clearly public reaction to the introduction into the Texas Legislature of Senate Bills 35 and 115.

From the *Fort Worth Star Telegram*, this letter to the editor by Thomas A. King, M.D., of Vernon, Texas:

Clear Own Ranks First

"Editor: Separate and apart from any intent you may have to defend or condone the off-brand medical cults, your editorials opposing the passage of the Basic Science Bill are fundamentally sound and basically true. As you intimate, the primary objective of this bill is not to make better off-brand groups, but to eliminate these cults from grazing in the medical field. To grant the practices of these cults a legitimate and scientific status when these practices are superimposed upon a passing knowledge of the basic sciences is to falsify the fundamental truths of scientific medicine. It is obvious and it is conceded that the practice of medicine without the capacity for correct diagnosis is a farce and a humbug. And this acumen is not conceived or developed by a study of these rudimentary subjects.

"As a matter of fact and truth, it is doubtful whether 10 per cent of the practicing physicians could pass a rigid examination in these subjects.

"If organized medicine, which holds, as you say, a monopoly in the field of health, would clean this field of all incompetency and humbuggery it should first attempt to clear its own ranks of

obvious abuses. And to accomplish these suggestions are made

"First, the permanency of the right to practice should be made dependent upon the maintenance of an adequate library and the attendance at intervals of post-graduate courses. Let doctors study diligently and for a definite purpose while others are to be studying while traveling or golfing. The public deserves fresher courses for the \$100-a-month school teacher. Why not the doctor?

"Second, since the doctor is the final arbiter in evaluating his services, his fees should be based upon a standard of fairness and justice with due regard for the economic status of each speciality. Take humanity out of the practice of medicine and you rob it of its noble heritage.

"Third, protect a fellow doctor from his short-comings, but not to the extent of sinning against society or endangering the welfare of the public.

"Fourth, for the safety and welfare of the public a doctor's professional proficiency in any branch of medicine should be underwritten by a standard of competence issued by some recognized authority. Some people do not believe that the prefix 'M. D.' denotes a doctor as a master in any field. They may desire to invade. This is the case with school teachers. Why not the doctor?

"Fifth, make adequate provision for the medical schools to accommodate those who are properly qualified and who desire a medical career.

"Sixth, make hospital facilities equally available to all competent and ethical doctors.

"Seventh, let the Oath of Hippocrates and not the dollar sign be the guiding spirit, then the cults will find poor grazing in the field of medicine and the public will cease to clamor for socialized medicine.

THOMAS A. KING, Vernon."

* * *

Further from editorials in the *Fort Worth Star-Telegram*:

"Since the present Medical Practices Act has safeguarded the people of this state from quackery for 40 years, the Legislature would be well advised to go slow in tampering with it, and to refuse to amend or revise it unless it can be shown beyond any doubt that the public health is in jeopardy. No such showing has yet been made."

* * *

"The Basic Science Bill and its companion bill to revise the Medical Practice Act should be defeated.

"Here is an opportunity for the 50th Legislature to show the citizenship of Texas that it is not the tool of any special interest pressure group; to let the people know that it can not be bullied by threats of political reprisal into doing the bidding of any self-serving minority; and to fulfill its democratic function of representing *all* the people rather than a favored few."

* * *

"The 82 to 33 vote by which the House of Representatives at Austin passed the basic science bill is a shocking revelation of the political power and astuteness of the organized medical profession in Texas. It should open the eyes of the people to the way a small but voluble and potent minority can

high-pressure elected representatives of all the people into doing its bidding.

"There was no public demand or clamor for passage of such a bill. The bill was drafted for the Texas State Medical Association and was sponsored exclusively by that organization. If it and a companion measure to revamp the 40-year-old Medical Practice Act (which has adequately safeguarded the public health of this state ever since 1907) finally are enacted, they will operate exclusively for the benefit of members of the State Medical Association by stifling competitive methods of practice."

* * *

From the *El Paso Times*:

"Any citizen of this great state has a perfect right to ask the medical profession: 'Is it my health you are so interested in at Austin or is it your own bank account?'"

"This newspaper hopes the Texas Senate sees fit to examine the 'basic science' bill more closely. In addition, it might ask the medical doctors if they want the anti-union laws recently passed applied to them. For the doctors have the strongest of all unions in the United States. They even tell a doctor how large letters he can use in hanging out his shingle. If he gets his name in the public print on purpose he may be called to account."

* * *

"This newspaper contends that the Texas Senate and Governor Jester should examine the bill very carefully. It is an out-and-out effort by the medical profession to legislate chiropractors out of business. It is an attempt by the medical profession to prescribe a course of study for another group. There is nothing fair about it."

The Daily Times Herald, Dallas, had this to say:

"As far as the medical profession itself is concerned, the paramount task confronting it at this time is to see that medical service is available to every person who needs it. Hundreds of rural communities and many small towns are deplorably short of doctors. This is a serious situation. By taking steps to relieve it, the medical profession can thwart politicians who favor socialized medicine, something that is a real danger to our democratic system in this era of confusion.

"As an agency whose duty it is to serve the public as a whole, the legislature should try to serve the people before it serves special groups, however worthy such groups may be. The time for lawmaking is so short that none of it should be wasted on proposals that concern the few rather than the many."

A. O. A.

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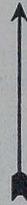
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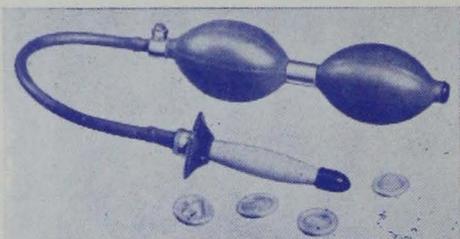
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