

6494.

PRACTICE OF OSTEOPATHY—MAY PRACTICE SURGERY
WHEN—USE OF ANAESTHETICS OR ANTISEPTICS.

SYLLABUS:

1. *Under the terms of section 1288 of the General Code, an osteopathic physician may, in addition to the practice of Osteopathy, if licensed prior to April 22, 1919, engage in the practice of only minor and orthopedic surgery, and if licensed subsequent to such date may engage in the practice of surgery, provided, however, that an osteopathic physician licensed prior to the above date, may submit to an examination in surgery, given by the state medical board, and upon passing the same, may then practice surgery.*

2. *An osteopathic physician may prescribe and administer anaesthetics or antiseptics only in the practice of Osteopathy, or in connection with the practice of surgery as above permitted.*

3. *An osteopathic physician is not permitted to prescribe or administer anaesthetics or antiseptics in cases which are not surgical or treated by kneading or manipulation.*

COLUMBUS, OHIO, December 10, 1936.

HON. H. M. PLATTER, *Secretary, State Medical Board, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent communication, which reads as follows:

“The State Medical Board directs me to ask for an interpretation of the provisions of Section 1288 of the medical practice act of Ohio. The Board is of the opinion that this section grants to the osteopathic physician the right to use anesthetics and antiseptics in the practice of osteopathy and surgery only, but does not permit the use of these drugs or other remedies in the general practice of medicine. In arriving at this conclusion, the Board has relied upon the definition of osteopathy in the case of *State vs. Gravett* 65 Ohio State 289, as well as the definition set forth in standard dictionaries. Is such interpretation correct and, if correct, may the osteopathic physician prescribe or administer anesthetics and antiseptics or other remedies in conditions which are not surgical or treated by kneading or manipulation, such as the internal administration of urinary or intestinal antiseptics or the use of intravenous medication, under the claim that the remedies employed are antiseptics.”

The Medical Practice Act, sections 1262 to 1295-20, General Code, provides for the practice of medicine and surgery and limited branches thereof.

Sections 1273 and 1274 of the General Code, which deal with the examination of applicants for certificates to practice medicine and surgery, read as follows:

Section 1273.

“The examinations of applicants for certificates to practice medicine or surgery shall be conducted under rules prescribed by the state medical board. Each applicant shall be examined in anatomy, physiology, pathology, chemistry, materia medica and therapeutics, the principles and practice of medicine, diagnosis, surgery, obstetrics and such other subjects as the board requires. The applicant shall be examined in materia medica and therapeutics and principles and practice of medicine of the school of medicine in which he desires to practice, by the number of members of the board representing such school.”

Section 1274.

If the applicant passes such examination, and has paid the fee required by law, the state medical board shall issue its certificate to that effect, signed by its president and secretary, and attested by its seal. Such certificate when deposited with the probate judge as required by law, shall be conclusive evidence that the person to whom it is issued is entitled to practice medicine or surgery in this state. An affirmative vote of not less than five members of the board is required for the issuance of a certificate.”

Section 1274-1, General Code, provides for the examination and licensing of persons desiring to practice any limited branch or branches of medicine and surgery.

Section 1288 of the General Code, deals with the practice of Osteopathy and reads as follows:

“The provisions of this chapter shall not apply to an osteopathic physician who passes an examination before the state medical board in the subjects of anatomy, physiology, obstetrics, surgery and diagnosis in the manner required by the board, receives a certificate from such board, and deposits it with the

probate judge as required by law in the case of other certificates. Such certificate shall authorize the holder thereof to practice osteopathy and surgery in this state, but shall not permit him to prescribe or administer drugs, except anaesthetics and antiseptics. No osteopathic physician holding a license to practice osteopathy at the time of the passage of this act, shall be permitted to practice major surgery, which shall be defined to mean the performance of those surgical operations attended by mortality from the use of the knife or other surgical instruments, until he shall have passed the examination in surgery given by the State Medical Board, but he may practice minor and orthopedic surgery, not in conflict with the definition of major surgery in this act. The certificate of an osteopathic physician may be refused, revoked or suspended as provided in section 1275 of the General Code of Ohio.

It will be noted from the above that persons desiring to practice medicine and surgery are required to pass an examination which covers many more subjects than the examination for a certificate to practice as an osteopathic physician.

From the above it is apparent, that an osteopathic physician is not required to have the same educational qualifications as a practitioner of medicine and surgery. Furthermore, it is evident that the Legislature in the enactment of sections 1274 and 1288, supra, considered the practice of Osteopathy as separate and distinct from the practice of medicine and surgery. As further evidence of this fact it will be noted that the unlawful practice of medicine and surgery and the unlawful practice of Osteopathy are treated in different sections of the General Code. Section 12694, General Code, provides in part as follows:

“Whoever practices medicine or surgery or any of its branches before obtaining a certificate from the State Medical Board in the manner provided by law, * * * shall, for the first offense be fined,” etc.

Section 12696 of the General Code, provides in part:

“Whoever announces or advertises himself as an osteopath or practices as such without complying with all the provisions of law relating to the practice of osteopathy * * * shall be fined,” etc.

Osteopathy has been defined as “rubbing and kneading the body for

the treatment, cure and relief of a certain infirmity or disease." See *State v. Gravett*, 65 O. S. 289; *State v. Liffing*, 61 O. S. 39.

Webster's International Dictionary defines "Osteopathy" as "A system of treatment based on the theory that diseases are chiefly due to deranged mechanism of the bones, nerves, blood-vessels and other tissues and can be remedied by manipulation of these parts."

In addition to the practice of Osteopathy as above defined, it will be noted that section 1288, supra, provides that an osteopathic physician may, if licensed subsequent to the passage of said statute, practice surgery, and if licensed prior to the passage of said statute, practice only minor and orthopedic surgery.

In an opinion rendered by this office on December 14, 1933, Opinions of the Attorney General for 1933, page 1930, it was held that the "passage date" of an act is the date on which the Governor signed said act. Section 1288, supra, in its present form was signed by the Governor on April 22, 1919. Therefore, said date is the date of the passage of said statute.

From the above, it is apparent that the practice of Osteopathy does not contemplate the use of medicine and drugs in the treatment and cure of disease. In fact the statute (section 1288, supra) provides that "a certificate issued to an osteopathic physician shall not permit him to prescribe and administer drugs, except anaesthetics and antiseptics." Bearing in mind that the practice of medicine and the practice of Osteopathy are not one and the same and that the certificate of licensure issued to an osteopathic physician does not authorize him to practice medicine, it must necessarily follow that the administering of anaesthetics and antiseptics by an osteopath may be done only in connection with the practice of Osteopathy and surgery.

It is clear that the Legislature intended the practice of Osteopathy to be subject to certain limitations and, therefore, if the language of the statute were construed so as to permit osteopathic physicians to administer anaesthetics and antiseptics generally, the limitations placed upon such practice by the Legislature would, at least to some extent, be removed.

The rule of construction applicable in the instant case is stated in Ohio Jurisprudence, Volume 37, pages 777 and 778 (section 449), as follows:

"The implication may be clear in particular cases that a statute, or section thereof, was intended to be subject to certain limitations. Hence, it does not follow that a statutory provision is unlimited because granted in general terms and without words of limitation. Such general terms are not necessarily to be regarded as of universal application, but may sometimes be

limited. They may be restrained to the sense in which they were used by the legislature in adopting the law. All words, if they are general and not express or precise, may in proper cases, be limited, qualified, restricted, or restrained by reference to specific terms with which they are associated, to other parts of the same statute, to the spirit of the statute, to the subject-matter, persons or objects to which it is apparent the legislature intended to apply the terms, or to other circumstances or facts existing at the time to which the terms relate."

The above text is supported by the following cases:

Greene County v. Harbine, 74 O. S. 318; Brown County v. Martin, 50 O. S. 197; Goodall v. Gerke Brewing Co., 56 O. S. 257; Buckeye Pipe Line Co., v. Fee, 62 O. S. 543; Ironton v. Wiehle, 78 O. S. 41; Brigel v. Starbuck, 34 O. S. 280.

In the case of Board of Education v. Board of Education, 46 O. S. 595, it was held:

"General words used in one section of the statute may be restrained to particular subjects, where the letter of the words would make it impracticable to accomplish a special object authorized by another section of the same statute."

Therefore, in specific answer to your question, it is my opinion that:

1. Under the terms of section 1288 of the General Code, an osteopathic physician may, in addition to the practice of Osteopathy, if licensed prior to April 22, 1919, engage in the practice of only minor and orthopedic surgery, and if licensed subsequent to such date may engage in the practice of surgery, provided, however, that an osteopathic physician licensed prior to the above date, may submit to an examination in surgery, given by the State Medical Board, and upon passing the same, may then practice surgery.

2. An osteopathic physician may prescribe and administer anaesthetics or antiseptics only in the practice of Osteopathy, or in connection with the practice of surgery as above permitted.

3. An osteopathic physician is not permitted to prescribe or administer anaesthetics or antiseptics in cases which are not surgical or treated by kneading or manipulation.

Respectfully,

JOHN W. BRICKER,
Attorney General.