

**A REVIEW OF RECENT LEGAL DECISIONS
AFFECTING PHYSICIANS, DENTISTS DRUGGISTS
AND THE PUBLIC HEALTH: TOGETHER WITH A
BRIEF FOR THE PROSECUTION OF UNLICENSED
PRACTITIONERS OF MEDICINE, DENTISTRY, OR
PHARMACY**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649061938

A Review of Recent Legal Decisions Affecting Physicians, Dentists Druggists and the Public Health: Together with a Brief for the Prosecution of Unlicensed Practitioners of Medicine, Dentistry, or Pharmacy by W. A. Purrington

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Cover @ 2017

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W. A. PURRINGTON

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A PAPER UPON MANSLAUGHTER, CHRIS-
TIAN SCIENCE AND THE LAW
AND OTHER MATTER

By *W. A. Purrington*
W. A. PURRINGTON

OF THE NEW YORK BAR

Counsel of the Dental Society of the State of New York, and Lecturer of Medical and
Dental Jurisprudence in the New York College of Dentistry, and one of the
collaborators in "A System of Legal Medicine," by Allan
McLane Hamilton, and others, etc.

NEW YORK
E. B. TREAT & COMPANY
241-243 West 23d Street
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PREFATORY.

FORMERLY, reported law cases specifically affecting medical practitioners were comparatively rare. In his work on "The Jurisprudence of Medicine," published in 1869, Ordronaux cited 324. In 1871, Glenn's "Treatise upon Laws Affecting Medical Men" cited but 438. In 1877, McClelland, in his "Civil Malpractice," collected but 76; in that work, however, cases are reported in full instead of being merely cited. In "The Law and Medical Men," published in 1884 by Mr. Vashan Rogers, 334 cases are cited, and in Field's "Medico-Legal Guide," appearing in 1887, there are 410 citations. Since that time, owing to increasing medical legislation and litigation of malpractice actions, the number of cases reported annually is much greater than ever before. In the single article upon "The Legal Relations of Physicians and Surgeons to their Patients and to One Another," in "A System of Legal Medicine," by Allan McLane Hamilton and others, published in 1894, there are 518 cases cited, and in "The International Medical Annual" for 1898 the number of such law cases noted for the preceding year was 131.

The publishers of that Annual have therefore thought it worth while to issue its review of legal decisions during the past year as a separate pamphlet, adding to it a convenient brief of the law points that usually arise in the prosecution of unlicensed practitioners of Medicine, Dentistry, and Pharmacy, and such other matter as may serve to make clear the public purpose and benefit of the laws regulating the practice of these vocations.

The brief, it is believed, gives citations of authority upon any points likely to arise in such prosecutions, sufficient to make it of assistance at trial to magistrates, courts, and counsel; and it is hoped that the other text may be serviceable in

pointing out the true purpose of medical legislation, and persuading those who have thought little of the matter, that dentistry is not a trade or a handicraft or yet a profession apart, as some have contended, but is a specialty of medicine.

The laws of the various States have not been reprinted because their bulk would increase the size and cost of the pamphlet to an extent not compensated for by the occasional advantage to the reader of having at hand the statute of some State other than his own, and also because these laws, being still in formative process, are so often amended that a compilation correct when given to the printer might be defective upon issuing from the press.

It is a pleasure in this connection to give public recognition to the untiring zeal of my friend, Dr. William Carr, of New York city, who as censor of the First District Dental Society, chairman of the Law Committee of the Dental Society of the State of New York, member of the State Board of Dental Examiners, trustee of the New York College of Dentistry, and in other capacities has for years freely devoted his time and means to the advancement of the standard of professional education in the special department of medical science wherein he elected to practise after graduation as a Doctor of Medicine, thus fully paying the debt that every one is said to owe to his profession.

I have added the article upon Manslaughter, Christian Science, and the Law, reprinted from the *Medical Record*, with footnotes calling attention to cases on the brief in this pamphlet, correcting the citation of *Regina v. Cook*, which should have been *Regina v. Senior*, and citing the decision in the latter case, reported after that article went to press. The increase in the number of so-called Christian Scientists, and the prevalent ignorance, even among the votaries of the cult, of what its theories are, led me to write, at the request of the editor, for the March number of the *North American Review*, an article summarizing the teachings of Mrs. Eddy and discussing their legal aspects. It is quite safe to say, judging from the testimony in reported law cases, that no two practitioners of Christian Science would probably agree with themselves or their founder as to what the theory and the practice of the cult are.

W. A. PURRINGTON.

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A REVIEW OF CASES AFFECTING MEDICAL MEN.

The Purpose and Justification of Medical Laws.

By the term "medical laws" is here meant all legislative acts regulating the practice of either general physic and surgery, or special departments thereof, as dentistry and pharmacy.

The right of every man to the fullest opportunity consistent with public welfare of earning a livelihood by exercising whatever talents and aptitudes for industry he may have, is so manifest and vital that every proposition to restrain it is properly looked upon with jealous scrutiny.

Laws framed only to benefit a class at the expense of the community, by placing any handicraft, art, calling, or business in the hands of the few to their enrichment, and so diminishing competition, are indefensible, injurious to the State, and obstructive to progress in the art, profession, or science affected.

The prescription by law of formulas or methods of practice, the statutory fostering of one system at the expense of another in any liberal calling, are improper uses of legislation. In medicine, for instance, it would be unwise to forbid absolutely the practice of any particular method of cure, or to command that no treatment of the sick should be followed unless approved by the regular practitioners; but it seems entirely proper to forbid the uneducated to practise according to any system. In other words, although the State, in order to protect private citizens and the public health against ignorance and imposture, may wisely require, as a prerequisite of license to practise medicine at all, a general education supplemented by special medical study and knowledge, yet it would be most unwise, and obstructive to progress, should the system or methods

of practice be prescribed by statute, or the practice of any system absolutely forbidden. When the licentiate has demonstrated that he is adequately equipped for his profession by study and acquirement, according to the learning of the age, he should be left free to apply his knowledge, skill, and judgment in particular cases, to investigate and experiment. His education and the judgment of his fellows afford the best safeguard against his adoption of mere vagaries; while civil and criminal liability for malpractice, the sense of duty, and desire to succeed professionally afford in each case the best assurances that he will exercise due caution and requisite care.

The right of the State, having in view the public welfare, to regulate by general laws the practice of medicine, has often been discussed by courts of last resort, which have affirmed the constitutionality of such legislation, and approved its purpose. In the decisive case of *Dent v. State of West Virginia* (129 U. S. 114), Mr. Justice Field, expressing the unanimous opinion of the Supreme Court of the United States, said: "Few professions require more careful preparation by one who seeks to enter it than that of medicine. It has to deal with all those subtle and mysterious influences upon which health and life depend; and requires not only a knowledge of the properties of vegetable and mineral substances, but of the human body in all its complicated parts, and their relation to each other, as well as their influence upon the mind. The physician must be able to detect readily the presence of disease, and prescribe appropriate remedies for its removal. Every one may have occasion to consult him, but comparatively few can judge of the qualifications of learning and skill which he possesses. Reliance must be placed upon the assurance given by his license, issued by an authority competent to judge in that respect, that he possesses the requisite qualifications. Due consideration, therefore, for the protection of society may well induce the State to exclude from practice those who have not such a license, or who are found upon examination not to be fully qualified."

From remote times the practice of medicine has been regulated by law, to greater or less extent, with occasional intervals when selfish class effort, actual or supposed, to use for private gain the public statute, has brought about reaction,—as when the House of Lords, reversing the law courts in the case of