



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**PRICE DANIEL  
ATTORNEY GENERAL**

March 30, 1950

Hon. Dorman Nickels  
County Attorney  
Wharton County  
Wharton, Texas

Opinion No. V-1024.

Re: The authority of the  
Board of Managers of  
a county hospital to  
appoint an osteopath  
to its staff of "visit-  
ing physicians."

Dear Mr. Nickels:

Your request for an opinion is as follows:

"Nightingale Hospital is a county institution owned and operated by Wharton County at El Campo, Texas. This hospital has been established and is operating under Title 71, Chap. 5, R.C.S. of Texas. Said hospital is managed by a Board of Managers appointed under authority of Art. 4479, R.C.S. of Texas and said Board desires to appoint a staff of visiting physicians as is provided for in Art. 4480, R.C.S. of Texas.

**"QUESTION**

"Is an 'osteopath' a 'physician' such as will entitle him to serve on the staff of visiting physicians appointed by the Board of Managers for a county hospital?"

Article 4480, V.C.S., provides in part as follows:

"The board of managers shall elect from among its members a president, and one or more vice-presidents and a secretary and a treasurer. It shall appoint a superintendent of the hospital who shall hold office at the pleasure of said board. Said superintendent shall not be a member of the board, and shall be a qualified practitioner of medicine, or be specially trained for work of such character.

"The board shall also appoint a staff of

visiting physicians who shall serve without pay from the county, and who shall visit and treat hospital patients at the request either of the managers or of the superintendent."

The authority for the Board of Managers of the County Hospital to appoint an osteopath to the staff of visiting physicians requires an interpretation of that portion of Article 4480 which states that the Board shall appoint a staff of visiting physicians and whether an osteopath is a physician.

Article 4510, V.C.S., provides:

"Any person shall be regarded as practicing medicine within the meaning of this law:

"(1) Who shall publicly 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 and to effect cures thereof and charge therefor directly or indirectly, money or other compensation; provided, however, that the provisions of this Article shall be construed with and in view of Article 740, Penal Code of Texas, and Article 4504, Revised Civil Statutes of Texas as contained in this Act."

In Attorney General Opinion No. 0-1298, dated September 18, 1939, this office stated that the practice of osteopathy has consistently been held to be within the phrase, "the practice of medicine." See Newman v. State, 124 S.W. 956 (Tex.Civ.App. 1910); Hayman v. City of Galveston, 273 U.S. 414 (1927); Collins v. State of Texas, 223 U.S. 288 (1912); Ex Parte Collins, 57 Tex.Crim. 2, 121 S.W. 501 (1909).

Article 4511, V.C.S., provides:

"The terms, 'physician,' and 'surgeon,' as used in this law, shall be construed as synonymous, and the terms, 'practitioners,' 'practitioners of medicine,' and, 'practice

of medicine,' as used in this law, shall be construed to refer to and include physicians and surgeons."

In Guy v. State, 116 Tex.Crim. 392, 32 S.W.2d 460 (1930), the court said:

"The definition of 'physician' as 'one authorized to prescribe remedies for and treat diseases, a doctor of medicine,' is approved in Prowitt v. Denver, 11 Colo. App. 70, 52 P. 286, and Castner v. Sliker, 33 N.J. Law 507, in which latter case appears the statement that a physician in common parlance is one skilled in both medicine and surgery. In Harrison v. State, 102 Ala. 170, 15 So. 563, the word 'physician' is defined as one who has received a degree of M.D.; one who lawfully practices medicine; one who professes or practices medicine for the healing art."

Inasmuch as an osteopath is a physician and is a practitioner of medicine within the meaning of the above statutes as construed by the courts, we agree with your conclusion that an osteopath may in the discretion of the Board of Managers be appointed to the staff of visiting physicians. The language "appoint a staff of visiting physicians" is not definite, but it is our opinion that the appointment of an osteopath would come within the meaning of the language used in the statute. Since it is within the discretion of the Board as to whom will be appointed, it necessarily follows that it would be discretionary as to whether an osteopath is appointed to the staff of visiting physicians.

#### SUMMARY

An osteopath is a practitioner of medicine within the meaning of the law (Articles 4510 and 4511, V.C.S.) and is eligible for appointment to the staff of visiting physicians appointed by a Board of Managers for a county hospital. All appointments to the

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staff of visiting physicians rest within  
the discretion of the Board of Managers.

Yours very truly,

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