Schools of Medicine

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MEDICAL MALPRACTICE IN ILLINOIS

Despite the fact that the above case has never been overruled, the committee drafting the Illinois Pattern Jury Instructions formalized the instruction on the basis of the majority rule that requires a higher standard for the specialist.\(^7\) This is true since the Schierson case involved a license revocation and, therefore, can be distinguished on its facts from a negligence action. Imposition of a higher standard on specialists, in a license revocation hearing, would cause a negligent act or omission to become gross malpractice, thus providing grounds for revocation. Yet, in a malpractice damage suit, it is more equitable to hold the specialist to a higher standard, especially considering increased specialization.

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SCHOOLS OF MEDICINE\(^1\)

The majority of American courts have held that medical practitioners are entitled to be judged according to their individual schools of medicine.\(^2\) However, a school of medicine must have certain recognized tenets and be followed by a respectable minority of the profession.\(^3\)

Illinois recognizes the existence of different medical schools of thought in its Medical Practice Act.\(^4\) For example, chiropractors and osteopaths are entitled to a limited medical practice under the Act.\(^5\) However, no discrimination in the administration of the Act is permitted against any school, system, or method of medical practice.\(^6\)

Despite legislative recognition of methods of treatment, and the strong majority opinion to the contrary, the standard of care is the same for anyone practicing medicine in Illinois, no matter what school is followed.\(^7\) In Bacon v. Walsh,\(^8\) the court stated that the defendant's case had not been prejudiced by failure to show what school of medicine he followed. The

\(^7\) I.P.I. 105.02 (1961). See p. 108 of this symposium for the instruction generally given.

\(^1\) The term "schools of medicine" is used to denote methods or systems of treating human disease as differentiated from the system of medicine practiced by physicians and surgeons. It is not intended to include various techniques used by physicians and surgeons in treating a given ailment.


\(^3\) Nelson v. Harrington, 72 Wis. 591, 40 N.W. 228 (1886).


"The provisions of this Act shall not be so construed as to discriminate against any system or method of treating human ailments . . . ." 1923, June 30, Laws 1923, p. 436, § 20.

\(^7\) Bacon v. Walsh, 184 Ill. App. 377 (1913). Similar provisions to those noted supra notes 5 and 6 were in existence when the case was decided under Medical Practice Act of 1899.

\(^8\) Ibid.
court held, regardless of school of medicine followed, the standard of care was that, "a physician and surgeon use that degree of professional knowledge, skill and care which the average physician and surgeon would ordinarily bring to a similar case under like circumstances in that locality."\(^9\)

Since this standard of care applies to all practice of medicine in Illinois, the problem is to determine what the practice of medicine is. Osteopathy has been referred to as the practice of medicine\(^{10}\) and osteopaths are considered to be physicians if practicing with a license.\(^{11}\) Although the premise of osteopathy is that human ailments are caused by the pressure of displaced bones on nerves and can be cured by manipulation, osteopaths will be presumably judged by the universal standard of care that is applied to physicians and surgeons.\(^{12}\) Furthermore, any attempt at treatment outside the limits of an osteopathic license subjects them to liability as an unqualified person.\(^{13}\)

A similar standard is applied to chiropractors since chiropractic treatment has been legislatively defined as the practice of medicine.\(^{14}\)

Naprapaths, who consider human ailments to be the result of strained or contracted ligiments, have been judicially defined as practitioners of a system of massage\(^{15}\) and not practitioners of medicine.\(^{16}\) Therefore, they will not be judged by the same standard as those practicing medicine but will be liable as an unqualified person.\(^{17}\)

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CONSENT

The relationship that exists between a physician and patient can probably be best described in the civil law term of consensual contract. That is, a contract springs into existence through a mutual manifestation of consent without the need for any formal offer, acceptance or consideration.

Despite the fact that no formalities are necessary, one essential element must be present—consent. The physician exposes himself to suits for technical batteries by treating a person without consent or in excess of

\(^{9}\) Supra note 7, at 379.
\(^{10}\) People ex rel State Board of Health v. Gordon, 194 Ill. 560, 62 N.E. 858 (1902).
\(^{11}\) People ex rel Cage v. Simon, 278 Ill. 256, 115 N.E. 817 (1917).
\(^{12}\) Supra note 7.
\(^{13}\) Williams v. Piontkowski, 337 Ill. App. 101, 84 N.E.2d 843 (1st Dist. 1949). Thus, the chiropractor or osteopath is faced with the dilemma of being judged by the principles of physicians and surgeons if he practices within the confines of his license or goes beyond it.
\(^{15}\) People v. Mattel, 319 Ill. App. 259, 39 N.E.2d 689 (2d Dist. 1942).
\(^{17}\) Supra note 13.