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Education Law—Revocation of Physician's License for Deceit in Reports to Third Parties

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the absence of any definitive framework concerning proprietary medicines in New York, the Court of Appeals specifically declined to base their holding upon more definite grounds, including an all-inclusive definition of proprietary medicines, in order to limit the necessity of future litigation in this area. This statute is a health measure enacted under the police powers of the state. While such a measure should not be a mere pretext to confer upon one group a competitive advantage, this consideration enters primarily into the constitutionality of the statute, i.e., whether or not there is a reasonable relation to public health.[12] While the Court undoubtedly reaches the right result, and furnishes some authority for future litigation, the opinion introduces another indefinite element—economic considerations—into the issue, where the issue itself is not delimited by a clear New York rule.

B. B. F.

REVOCATION OF PHYSICIAN'S LICENSE FOR DECEIT IN REPORTS TO THIRD PARTIES

The appellant was found guilty of fraud and deceit in the practice of medicine and of unprofessional conduct after a formal hearing before a subcommittee of the Medical Committee on Grievances. He was charged with submitting false and exaggerated medical reports and bills to an attorney, to insurance companies, and to the Transit Authority. The findings of fact were supported by substantial documentary evidence and testimony. The evidence also tended to show that such acts continued until 1956. The Medical Committee on Grievances confirmed such findings with all nine members present voting guilty, and appellant's license to practice medicine was revoked. This determination was unanimously confirmed by the Appellate Division. On appeal, *held*, affirmed. Nothing in the statute under which appellant was found guilty limits discipline to cases where the fraud is perpetrated directly on the patient. Where the fraud is practiced on anyone and it affects a public interest, the physican is subject to discipline. A unanimous vote of the Grievance Committee, where a quorum is present, is sufficient to find a physician guilty. *Wassermann v. Board of Regents*, 11 N.Y.2d 173, 182 N.E.2d 264, 227 N.Y.S.2d 649 (1962).[1]

A physician may have his license revoked or suspended when found "guilty of fraud or deceit in the practice of medicine"[2] or when the "physician is or has been guilty of unprofessional conduct."[3] The law further provides that anyone who "holds himself out" as a doctor is practicing medicine within the

12. See Defiance Milk Products Co. v. Du Mond, 309 N.Y. 537, 132 N.E.2d 829 (1956).

1. 13 A.D.2d 591, 212 N.Y.S.2d 884 (3d Dep't 1961).
2. N.Y. Educ. Law § 6514(2)(a).
3. N.Y. Educ. Law § 6514(2)(g).

statute.[4] The Commissioner of Education has specified some acts which are to be classed as "unprofessional conduct" but has further stated that such conduct "shall not be limited to the following."[5] Hence, the courts have upheld revocation or suspension of licenses both where there has been a specific rule or regulation violated[6] and also where the offense committed by the physician was not within those specifically prohibited by the statute.[7]

Although in most of the cases in which the physician is charged with fraud and deceit the fraud was directed against the patient himself, the courts have also upheld suspension or revocation where such fraud has not been on the patient. It has been held that where a physician had prescribed narcotics to known addicts for a disease which the physician fabricated, this amounted to such fraud and deceit.[8] Likewise, where a physician failed to mention a known disorder of a patient in a medical report to a third party[9] or submitted bills in workman's compensation cases which contained charges for treatments not given,[10] and where a physician gave a certificate to a patient for use by a lawyer which specified false injuries and false charges for treatment,[11] the physician has been held for fraud and deceit under the statute. A doctor was also answerable under fraud and deceit in a case similar to the instant case for false reports and bills submitted to an attorney.[12] Where there is less than a vote of all ten members of the Committee on Grievances, such a non-unanimous vote for revocation is not sufficient. It will not be sufficient where one member refuses to vote even if at a subsequent meeting the vote is unanimous.[13] But where there is a quorum, and all present vote, the decision is unanimous.[14] Where one person dies before it is decided, the vote is still considered to be unanimous.[15] The Education Law provides that a committee on revocation of licenses shall be composed of ten members and, further, that a unanimous vote is needed for guilt. It also provides that six members shall constitute a quorum.[16]

The Court in the instant case reasoned that since the appellant had held himself out as a practitioner to insurance companies and to the Transit Authority, he was practicing fraud and deceit within the words of the statute. The Court quickly dismissed the contention that the fraud must be directly

4. N.Y. Educ. Law § 6501(4).
5. 8 NYCRR 60.1(d).
6. Cherry v. Board of Regents, 289 N.Y. 148, 44 N.E.2d 405 (1942); Brown v. University of the State of New York, 266 N.Y. 598, 195 N.E. 217 (1935); Dr. Bloom Dentist, Inc. v. Cruise, 259 N.Y. 358, 182 N.E. 16 (1932).
7. Bell v. Board of Regents, 295 N.Y. 101, 65 N.E.2d 184 (1945); Dubin v. Board of Regents, 286 App. Div. 9, 141 N.Y.S.2d 54 (3d Dep't 1955).
8. Tompkins v. Board of Regents, 299 N.Y. 469, 87 N.E.2d 517 (1949).
9. Herschman v. Board of Regents, 269 App. Div. 891, 56 N.Y.S.2d 241 (3d Dep't 1945) (mem.).
10. Siegal v. Board of Regents, 270 App. Div. 783 (3d Dep't 1946) (mem.).
11. Mester v. Board of Regents, 259 App. Div. 776 (3d Dep't 1940) (mem.).
12. Shaw v. Board of Regents, 13 A.D.2d 589, 212 N.Y.S.2d 701 (3d Dep't 1961).
13. Hilfer v. Board of Regents, 283 N.Y. 304, 28 N.E.2d 848 (1940).
14. Harroun v. Brush Electric Light Co., 152 N.Y. 212, 46 N.E. 291 (1897).
15. Warn v. N.Y. Cent. & H.R.R.R. Co., 163 N.Y. 525, 57 N.E. 742 (1900).
16. N.Y. Educ. Law § 6515(1), (4), (9).

practiced on the patient by reasoning that in any case it is a misuse of the license to practice. To the argument that for fraudulent reports to be the basis of a revocation of a license they must either be officially required or else affect a vital public interest, it is answered that even if true, a fraud on insurance companies or the Transit Authority affects such a vital interest. The Court also held that there is evidence that appellant committed the fraudulent acts *after* the "unprofessional conduct" regulation had been passed and that therefore the statute was not being applied retroactively. The Court further found that since the action of appellant was "malum in se," the Board could find it was "unprofessional" according to the standards set by physicians in the community. Since it was a unanimous vote of a quorum which found appellant guilty, the vote constituted a unanimous decision as required.

The Court has clearly announced what medical practices will constitute fraud and deceit within the statute and interpreted it to carry out the obvious intention of the Legislature in passing it. There is no necessity to interpret the statute strictly because this statute is not criminal in nature. All doctors should welcome a decision of this clarity, for the Court has set down guide lines to determine when doctors shall be subject to the action of the Committee.

R. W. S.

EVIDENCE

DOCUMENTARY EVIDENCE UNDER RULE 113(4) OF THE RULES OF CIVIL PRACTICE DEFINED

Plaintiff brought an action for a judicial determination of her marital status and that of the co-defendants. She asked Special Term for a declaratory judgment stating that the defendants Joseph Brill and Beverly Stiansen are not husband and wife, because the Mexican divorce allegedly obtained by defendant Brill is void. She further sought that any subsequent marriage between the defendants be annulled and that defendant Stiansen be enjoined from using the name Beverly Brill. Plaintiff believed that defendant Brill had obtained a Mexican divorce and married defendant Stiansen because he had declared that fact in the presence of several witnesses. Special Term granted defendants' motion for summary judgment under Rule 113, subdivision 4 of the Rules of Civil Practice, on the basis of certificates from the Civil Court in Chihuahua, Mexico, where defendant allegedly obtained the divorce, stating that officials had searched the files of the Court and had not found any registration of a divorce action instituted by defendant Brill during the period alleged by the plaintiff. The Appellate Division reversed on the ground that the certificates were not documentary evidence within the meaning of Rule 113, subdivision 4. The Court of Appeals *held*, that the certificates, though they only stated that certain documents could not be found, nevertheless satisfied