CHAPTER 147

PHYSICIANS AND SURGEONS

147.01 BOARD OF MEDICAL EXAMINERS.

HISTORY. 1887 c. 9 ss. 1, 2; G.S. 1878 Vol. 2 (1888 Supp.) c. 124 ss. 135, 136; G.S. 1894 ss. 7891, 7892; 1895 c. 89 ss. 1, 2; R.L. 1905 s. 2295; G.S. 1913 s. 4970; 1921 c. 68 s. 1; G.S. 1923 s. 5706; 1927 c. 188 s. 1; M.S. 1927 s. 5706.

A physician as defined by the statutes and in common parlance, is a person skilled in both medicine and surgery; that is, medical science. When the injured person is not negligent in the selection of a medical attendant, the wrongdoer is liable for all the proximate results of his own act, although the consequences of the injury would be less serious if the medical attendant had exercised proper professional care and skill. Goss v Goss, 102 M 346, 113 NW 690.

A physician and the local aerie of Eagles, a corporation, seek to enjoin the state board of examiners from interfering with the conduct of the physician in his contract with the aerie for the benefit of the members and their families. The petition was properly dismissed as to the corporation for it has no interest on the issue of the conduct of the physician; and properly dismissed as to the physician because the state has provided a proper mode of trial between the board and the physician, and from any finding there is a right of appeal. Fisch v Sivertsen, 208 M 102, 292 NW 758.

The board lacks power to suspend a license. OAG Aug. 23, 1929.

A member of the state board of medical examiners may accept employment as a physician by the director of public institutions for the care and treatment of inmates for the Home School for Girls. OAG March 10, 1931.

The state board of medical examiners may employ an attorney without being controlled by the department of administration. OAG Oct. 24, 1933.

The citation was served upon Dr. May while he was an inmate of the federal penitentiary. It is not required that the licensee be served notice of hearing in this state. Nor is it necessary that he appear. It is sufficient that the notice is served upon him in sufficient time to enable him to either appear personally or by counsel. OAG Dec. 29, 1934 (714).

147.02 EXAMINATION AND LICENSE; REVOCATION.

HISTORY. 1887 c. 9 s. 3; G.S. 1878 Vol. 2 (1888 Supp.) c. 124 s. 137; G.S. 1894 s. 7893; 1898 c. 89 s. 3; R.L. 1905 s. 2296; 1909 c. 474 s. 1; G.S. 1913 s. 4971; G.S. 1923 s. 5705; 1927 c. 188 s. 2; M.S. 1927 s. 5707; 1937 c. 203 s. 1.

The power of the board of medical examiners to grant or revoke a license must be construed in connection with other sections of revised laws. This section does not fail of legal effect because it in itself does not contain the legal requirements supplied by other sections. Laws 1909, Chapter 474, giving to a physician the right to appeal to the district court, governs further proceedings for removal, and is constitutional. Wolfe v Board of Medical Examiners, 109 M 360, 123 NW 1074.

The action of the state board of medical examiners in refusing to grant a license to a physician from another state is not appealable. Williams v Minnesota State Board of Medical Examiners, 120 M 313, 139 NW 500.

License fees received by the secretary and treasurer of the state board of medical examiners under the revised laws, properly belong to the board and need not be turned into the state treasury. State v Fullerton, 124 M 151, 141 NW 755.

In a case where the defendant is being sued for malpractice for alleged neglect, the question put to a qualified expert should not call for his opinion as to whether the surgeon was proper or improper, but rather whether it was according to the cus-

tomary and usual practice of the ordinarily careful and skilled surgical practitioners of the same community. Lorenz v Lerche, 157 M 437, 136 NW 564.

This action was to recover damages for the benefit of plaintiff's child, whose leg was fractured and arm paralyzed at birth by the manual force exerted by defendant, the attending physician. The question of negligence was for the jury. The defendant was, within 48 hours of the birth of the child, dismissed, and it appears that his successor could have cured the injury by simple treatment, but none was given. Evidence to that effect was admissible. Korman v Hagen, 165 M 320, 206 NW 350.

The evidence as to the defendant's neglect in caring for plaintiff as his physician was one for the jury. Anderson v Satterlund, 158 M 205, 197 NW 102.

When a patient selects a doctor of a recognized school of treatment he thereby adopts the kind of treatment common to that school. The care, skill and diligence with which he is treated must be tested by the evidence of those who are trained and skilled in that particular school of treatment. Negligence is not presumed from results. Nelson v Dahl, 174 M 574, 219 NW 941.

If several kinds of negligence are charged, and malpractice, and there is a general verdict, a new trial is granted if a verdict on one of the grounds is not justified. Gamradt v DuBois, 176 M 312, 223 NW 296.

The two year statute of limitations does not begin to run against malpractice of a physician under employment in case of childbirth, when there is a negligent treatment of a negligent failure to make a proper diagnosis and prescribe proper care throughout the treatment, until the treatment ends. Bush v Cress, 178 M 482, 227 NW 432; Schanil v Branton, 181 M 381, 232 NW 708; Schmit v Esser, 183 M 354, 236 NW 622.

The patient died very soon after a tonsilectomy. The surgeon had used a local anesthetic for the operation. Without further proof, this is not a sufficient basis on which the jury can find that the surgeon used an insufficient amount of the anesthetic. Johnson v Arndt, 186 M 253, 243 NW 67.

A delirious patient in a hospital was restrained by applying handcuffs and other physical restraints, and there was administered to him a hypodermic injection of strychnine. There was expert testimony to the effect that this was improper treatment, and the verdict for the plaintiff was justified. Vrase v Williams, 192 M 304, 256 NW 176.

Whether the physician was guilty of malpractice in only using one splint to reduce broken bones in the forearm, was for the jury. A judgment for $2500 is not excessive for deformity and lack of function of the forearm for improper reduction of the fracture. Citrowski v Libert, 194 M 269, 260 NW 297.

The alleged malpractice was in the use of a hypodermic needle of too small guage. The defendant at the time of the accident admitted he had used too small a needle, but the expert testimony was otherwise. The alleged admissions of the defendant are insufficient to make a case for the jury in the absence of expert medical testimony whereby the jury could have found that the operation was in accordance with accepted standards of medical practice. Quickstad v Tavenner, 196 M 125, 264 NW 436.

The negligence sought to be established was that the nurse giving the morphine injection was alleged to have negligently inserted the hypodermic needle outside of the area on the patient's arm which she had properly sterilized for that purpose. Infection resulted. Proof was insufficient, and no recovery could be made. Posthuma v N. W. Hospital, 197 M 304, 267 NW 221.

A physician and surgeon is not an insurer of a cure or good results. He is only required to possess the skill and learning possessed by the average member of the school of his profession, in good standing in his locality, and to exercise that skill and learning with due care. No presumption of negligence arises from the fact that an operation by a physician does not result in a cure. The doctrine of res ipsa loquitor does not apply and the evidence of medical experts is necessary. Yates v Gamble, 198 M 7, 268 NW 670.

In this action for malpractice charging three doctors who participated in the gall bladder operation with negligency, having left within his body a gauze pack, a verdict should have been returned in favor of the doctor whose only part in the

operation was administration of the anesthetic. The two doctors performing the operation might legally be held. Brossard v Koop, 200 M 410, 274 NW 241.

Ordinarily when an action is brought to reform an instrument set up as a defense in an action at law for damages, the court should state the later action to abide a decision in the former. But from the undisputed facts disclosed by the various motions involved in the deal, it appears that the release even if reformed, would still bar plaintiff's recovery in her malpractice action. Ahlstead v Hart, 201 M 82, 275 NW 404.

The doctor is not liable for negligency unless the alleged injuries are the proximate results of the negligent acts complained of. A physician and surgeon is not liable for injuries unavoidably resulting in spite of the exercise of due care. Nelson v Nicollet Clinic, 201 M 505, 276 NW 801.

The jury could not infer from the fact that necrosis occurred, that the defendant used a solution other than normal saline solution, since the necrosis might with equal probability have resulted from some other cause. There was no direct evidence that the solution used was not a normal saline solution. Collings v N. W. Hospital, 202 M 139, 277 NW 910.

Evidence examined and found insufficient to sustain the verdict awarded to the plaintiff for malpractice, the alleged negligence being the injection of oxycyanide of mercury solution into an eye afflicted with cataract. Cassidy v McLaughlin, 205 M 30, 285 NW 889.

The state board of medical examiners has been given broad powers in respect to licensing medical practitioners and in suspending or revoking such licenses. Since the act makes provision for notice, opportunity to be heard and review by appeal to the district court on questions of both law and fact, any error may be corrected, and the injunctive relief sought in this suit has no standing in law, and this action must be dismissed. Fisch v Sievertsen, 208 M 102, 292 NW 758.

Uncontradicted evidence tending to show that a doctor's habitual method of diagnosis has no scientific basis and is a species of quackery, is sufficient to warrant the board of medical examiners in suspending his license. Board v Schmit, 207 M 526, 292 NW 255.

Prisoners in the penitentiary need not waive negligence of doctor or surgeon as a condition of treatment. AOG Nov. 20, 1934.

It is unlawful for a fraternal corporation to employ a doctor of medicine and an osteopath for treatment of its members on a salary basis, or on a basis of percentage of dues paid by the members, and the practitioners are guilty of malpractice. OAG Aug. 8, 1939 (303).

Liability of master for malpractice of doctor employed to treat servant. 18 MLR 479.

Reciprocal and retaliatory legislation, 21 MLR 376.

147.03 LICENSING OF PHYSICIANS LICENSED BY BOARDS OF OTHER STATES OR NATIONAL BOARD OF MEDICAL EXAMINERS.

HISTORY. 1905 c. 236; 1913 c. 139 s. 1; G.S. 1913 s. 4973; 1919 c. 251 s. 1; G.S. 1923 s. 5709; 1927 s. 188 s. 3; M.S. 1927 s. 5709.

The action of the state board of medical examiners in refusing to grant a license to a physician from another state is not appealable. Williams v Board, 120 M 313, 139 NW 500.

License fees received by the secretary and treasurer of the board may be retained and need not be turned into the state treasury. State v Fullerton, 124 M 151, 144 NW 755.

Review of action of the medical board. 20 LRA 55.

147.04 RETALIATORY PROVISIONS.

HISTORY. 1905 s. 236; 1913 c. 139 s. 2; G.S. 1913 s. 4974; G.S. 1923 s. 5710; M.S. 1927 s. 5710.

147.05 DUTY OF SECRETARY; MONEYS, HOW PAID; COMPENSATION, EXPENSES.

HISTORY. 1905 c. 236; 1913 c. 139 s. 4; G.S. 1913 s. 4976; 1921 c. 68 s. 2; G.S. 1923 s. 5712; M.S. 1927 s. 5712.

The commissioner of administration has control of the compensation of the secretary, treasurer, and his assistants. OAG Oct. 16, 1929.

147.06 LICENSING OF ITINERANT PHYSICIANS BY STATE BOARD.

HISTORY. 1911 c. 260 s. 1; G.S. 1913 s. 4977; 1917 c. 362 s. 1; G.S. 1923 s. 5713; M.S. 1927 s. 5713.

147.07 OFFENSES.

HISTORY. 1917 s. 362 s. 1; G.S. 1923 s. 5714; M.S. 1927 s. 5714.

Expert testimony to the effect that it was improper to treat a delirious patient in a hospital by applying restraints and administering injections of strychnine, was sufficient to justify a verdict against the physician in favor of the executor of the patient's estate. Brase v Williams, 192 M 304, 256 NW 176.

147.08 RECORD OF LICENSES; REPORT TO SECRETARY.

HISTORY. 1887 c. 9 ss. 4, 5; G.S. 1878 Vol 2 (1888 Supp.) c. 124 ss. 138, 139; G.S. 1894 s. 7894; R.L. 1905 s. 2298; G.S. 1913 s. 4979; G.S. 123 s. 5715; M S. 1927 s. 5715.

147.09 EXEMPTIONS.

HISTORY. 1887 c. 9 ss. 4, 5; G.S 1878 Vol. 2 (1888 Supp.) s. 124 ss. 138, 139; G.S. 1894 s. 7895; R.L. 1905 s. 2299; G.S. 1913 s. 4980; G.S. 1923 s. 5716; M.S. 1927 s. 5716.

147.10 PRACTICING WITHOUT LICENSE; PENALTY.

HISTORY. 1887 s. 9 s. 6; G.S. 1878 Vol. 2 (1888 Supp.) s. 124 s. 140; G.S. 1894 s. 7896; R.L. 1905 s. 2300; G.S. 1913 s. 4981; G.S. 1923 s. 5717; 1927 c. 188 s. 4; M.S. 1927 s. 5717.

That an unlicensed person has practised medicine, is the gist of the misdemeanor. That such person has for a fee prescribed any drug, medicine or any other agency for the treatment of disease, is one kind of evidence of guilt and not the exclusive substance of the offense. State v Oredson, 96 M 509, 105 NW 188.

The act of a person who styles himself a doctor in receiving a patient who has applied to him for medical attention, and examining such person and diagnosing his ailment, and recommending an operation, is practicing medicine even though he prescribes no drug and administers no treatment. State v Rolph, 140 M 190, 167 NW 553.

An indictment charging that, at a certain time and place, the defendant unlawfully practiced medicine for a fee and did prescribe, direct and recommend certain drugs and medicine for use without a license so to do, states an offense under this section. State v Bohl, 144 M 436, 175 NW 915.

A naturopath who, without a license, resorted to natural remedies, is unlawfully engaged in the practice of medicine as defined in this section and is not entitled to the benefit of section 8 of the basic science law concerning registration without examination. Shenk v State Board, 189 M 1, 250 NW 353.

The plaintiff, a layman, in conducting a "health audit" for a fee for which he furnished his subscribers with the results of urinalysis and blood pressure tests, either self advised or passed on to the subscriber advice from the pathologist and in some cases advising diet and exercise, was practicing medicine unlawfully according to the provisions of this section. Granger v Adson, 190 M 23, 250 NW 722.

A chiropractor cannot prescribe diet or special foods for the purpose of correcting physical ailments or to cure a disease. OAG Nov. 16, 1935 (535a).

147.11 PHYSICIANS AND SURGEONS PROHIBITED FROM SPLITTING FEES.

HISTORY. 1917 s. 365 s. 1; G.S. 1923 s. 5718; M.S. 1927 s. 5718.

147.12 PUNISHMENT FOR VIOLATION.

HISTORY. 1917 c. 365 s. 2; G.S. 1923 s. 5719; M.S. 1927 s. 5719.

147.13 REVOCATION OF LICENSE.

HISTORY. 1917 c. 365 s. 3; G.S. 1923 s. 5720; M.S. 1927 s. 5720.