

standards in effect after June 18, 1974 were automatically incorporated by reference. Also, these safety standards, together with any amendments to safety standards continued pursuant to Subsection 21(1) of MIOSHA required to comply with OSHA should be promulgated only after consultation with an advisory committee and adherence to the provisions of Sections 41 and 42 of the APA.

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MEDICAL PRACTICE BOARD: Hypnosis

To treat or offer to treat any human ailment, complaint or condition by the use of hypnosis constitutes the practice of medicine.

Opinion No. 4877

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This is in response to the inquiry directed to this office by the Medical Practice Board for my opinion on the question of whether the use of hypnosis in the treatment of human illness constitutes the practice of medicine within the meaning of the Medical Practice Act, 1973 PA 185; MCLA 338.1801 *et seq*; MSA 14.542(1) *et seq*.

Before a conclusion may be drawn, reference must be made to 1973 PA 185, *supra*, § 2(g); MCLA 338.1802; MSA 14.542(2), which defines the practice of medicine as follows:

"As used in this act:

"* * *

"(g) 'Practice of medicine' or 'to practice medicine' means to diagnose, treat, prevent, cure, or relieve a human disease, ailment, defect, complaint, or other condition, whether physical or mental, by attendance or advice, or by a device, diagnostic test, or other means, or to offer, undertake, attempt to do, or hold oneself out as able to do, any of these acts."

Thus, if hypnosis is to be within the practice of medicine as defined above, its use as a diagnostic treatment or curative method must be established.

Hypnosis is defined in Stedman's Medical Dictionary (3rd ed, 1972), p 606, as follows:

1. Hypnotic state; an artificially induced state resembling deep sleep, or a trancelike state in which the subject is highly susceptible to suggestion and responds readily to the commands of the hypnotist.
2. Somnus; natural sleep (rare)."

A number of authorities have established the use of this sleep state in various areas of medical practice. Hypnosis has been used as an assessment

tool in the treatment of various physical ailments. It has been used for treatment of morbid fears and unwanted habits and such various conditions as anorexia nervosa, chronic dyspepsia, migraine headache, hypertension, stuttering, neuroses, hysteria, and in medical specialties such as pediatrics, gynecology, obstetrics and dermatology.¹ In addition, hypnosis has also been established as a useful anesthetic in various medical procedures. Most recently, it has been used in treating terminal cancer patients to relieve pain. This has rendered these patients drug-free during the most chronic times of their illness.

In addition to the success shown in the diagnosis and treatment of the conditions mentioned above, hypnosis has been utilized in treating patients who suffer from obesity.² It has been determined that included in the causes of, as well as the ramifications of, obesity are pathological as well as mental or emotional conditions. As such, obesity is recognized as a valid medical problem.

All of the conditions mentioned above may be said to be within the terminology of 1973 PA 185, *supra*. 1973 PA 185 addresses itself to the treatment or prevention or cure of any human disease, ailment, defect, complaint or other condition. The use of such broad language establishes that the intent of the legislature was to include within the realm of the practice of medicine any condition which is manifested in humans for which diagnosis, treatment, or relief is sought. Therefore, where hypnosis is used as a diagnostic or treatment method to alleviate any medical complaint or condition, be it physical or mental in nature, it is to be considered the practice of medicine.

Although no reported Michigan case has been found, two other jurisdictions have considered whether the use of hypnosis to alleviate various human ailments and conditions constitutes the practice of medicine. *Masters v State*, 341 SW2d 938; 85 ALR2d 1123, (Tex, 1960), involved defendant's appeal from his conviction of unlawfully practicing medicine by advertising and performing hypnosis. After noting that the case was one of first impression, the court quoted from defendant's advertisement, including the following:

“ . . . Benefits obtained through hypnosis are freedom from fears, tensions, insecure feelings, inferiority, overweight, smoking, drinking, poor memory and extreme nervousness. . . .” p 940; p 1125

The court went on to set forth the manner in which defendant actually attempted to alleviate human ailments and conditions, ranging from headaches to ulcers, through the use of hypnosis. All of this conduct was considered in relation to the following definition of the practice of medicine:

“[1] Article 741, Vernon's Ann. P.C., under which this prosecution was brought, reads, in part, as follows:

“ “Practicing medicine”

¹ Hartland, *Medical and Dental Hypnosis and Its Clinical Applications* (Billiere Findall Landon 1966, 1971), pp 242, 263-266.

² Ambrose and Newbold, *A Handbook of Medical Hypnosis* (Williams and Wilkins Company, 1958), p 95.

“Any person shall be regarded as practicing medicine within the meaning of this Chapter:

“1. * * *

“2. Who shall diagnose, treat or offer to treat any diseases or disorder, mental or physical, or any physical deformity or injury, by any system or method, or 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.”
p 941; p 1126

Concluding unequivocally, the court then stated:

“... It is clear from the record in this case that appellant offered to treat a physical or mental disorder by a system or method and to affect a cure therefor and that he charged money for his services and so we hold the evidence to be sufficient to support this conviction. . . .”
p 941; p 1127

It is noteworthy that the definition of the practice of medicine used by the *Masters* court is somewhat narrower than the Michigan definition.

People v Cantor, 18 Cal Rptr 363; 198 Cal App 2d Supp 843 (1961), is the other reported case involving hypnosis. This case also involved defendant's appeal from a conviction for practicing medicine without a license by advertising and performing hypnosis. In reference to defendant's advertisements, the court stated:

“... He advertised, as Director of the National Hypnosis Institute in Los Angeles, the values, benefits and results of ‘Hypnosis and Self Hypnosis’, ‘Hypnosis helps lose weight * * * relax. * * *’, ‘Learn Self Hypnosis * * * improve * * * nerves & bad habits’, ‘The Professional Hypnotists is a skilled workman. His tool is Hypnosis * * *’ and the advertisement invited phone calls and investigation by readers (People's Ex. 2).” p 364; p 845

Instances of defendant's actual treatment for numerous human conditions, including bedwetting, cancer, pain, and obesity, were than listed, all of which were to be evaluated by the standard enunciated as follows:

“... The pertinent elements of the offense proscribed by § 2141 are: practicing or attempting to do so, or advertising or a holding out as practicing, any system or mode of treating the sick or afflicted, or diagnosing, treating, or prescribing for any ailment, disease, disorder, or other mental or physical condition of any person.” p 364; p 845

Moreover, the court stated:

“[3] That appellant said he did not profess to be a doctor is not conclusive, since a violation of the Medical Practice Act is not absolved by a concurrent statement that the violator is not a doctor. . . .”
p 366; p 848

The court then noted:

"Coming to the question of first impression, i.e., whether practicing hypnotism is practicing medicine, the only case found on the precise point is that of *Masters v State of Texas* (Tex. Cr. App. 1960), 341 S.W.2d 938, which is greatly similar to our case. . . ." p 366; p 849

Finally, the court rendered its judgment and used the following language:

"[7] It is our considered opinion that, in the light of the record in this case, the practice of hypnotism as a curative measure or mode of procedure by one not licensed to practice medicine, amounts to the unlawful practice of medicine. . . ." p 367; p 850

The *Masters* case and the *Cantor* case are apparently the only authorities directly on point. Indeed, the two cases are cited as the only extant precedent in an American Law Reports Annotated article entitled "Hypnotism as Illegal Practice of Medicine", 85 ALR2d 1128. The author of that article found that whether hypnosis constitutes the practice of medicine depends upon the definition of the practice of medicine in the particular state:

". . . The use of hypnotism is not, per se, a violation of the medical licensing acts, and where the statute provides, in part, that the practice of medicine is accomplished by one who 'prescribes drugs, medicines, or other remedies' for body diseases and infirmities, the practice of hypnotism as a treatment or cure of sickness or injury may be permitted. . . .

"* * *

"Some statutes define the practice of medicine more broadly as diagnosis or treatment of disease or disorder 'by any system or method,' and under such provisions the unlicensed practitioner of hypnotism may be guilty of illegal practice of medicine if he uses it, or purports to be able to use it, to effect relief from bodily ailments." p 1128-1129

Of course, the Michigan statute is broadly drawn so that the latter quotation is most pertinent.

Accordingly, it is my opinion that the use of hypnosis, or an offer to use hypnosis, to diagnose or treat a human ailment or other condition constitutes the practice of medicine.

Notwithstanding the fact that a particular activity constitutes the practice of medicine, it is permissible for the activity to be performed by a person not licensed to practice medicine. The exemptions from the medical licensure requirements are set forth in 1973 PA 185, *supra*, § 16, MCLA 338.1816; MSA 14.542(16) as follows:

"Sec. 16. (1) Under the circumstances described, and subject in each case to the limitations stated, the following persons are exempt from licensure to practice medicine under this act:

"(a) A medical officer of the armed services of the United States, of the United States public health service, or of the veterans administration, holding a degree from a medical school but not licensed to practice medicine in this state, while engaged in the performance of his official duties.

"(b) An individual authorized to practice medicine in a foreign country, employed by the public health service maintained by the government of the foreign country for the exclusive use of members of its merchant marine and members of its consular and diplomatic corps, while caring for such members in the performance of his official duties.

"(c) A doctor of medicine residing in another state or country and authorized to practice medicine there who, in an exceptional circumstance, is called in consultation by a doctor of medicine licensed in this state, or who, for the purpose of furthering medical education, is invited by a medical school approved by the board or by a recognized medical organization to conduct a lecture, clinic, or demonstration, so long as he does not open an office or designate a place to meet patients or receive calls within this state.

"(d) A doctor of medicine authorized to practice medicine in another state or country, or a medical officer described in subdivision (a) of this section, or an individual who meets the requirements of subdivision (d) of section 6, while rendering medical care in a time of disaster or while caring for an ill or injured individual at the scene of an emergency.

"(e) A student in training in a medical school approved by the board while performing the duties assigned to him in the course of his training.

"(f) A person qualified by education, training and experience who performs selected acts, tasks, or functions under the direction and control of a licensed doctor of medicine.

"(g) A person licensed under other laws of this state to the extent authorized by his license.

"(h) Osteopathic physicians licensed under the provisions of Act No. 162 of the Public Acts of 1903, as amended, being sections 338.101 [sic] to 338.109 of the Michigan Compiled Laws."

If a person lacks medical licensure that qualifies under one of the above quoted exemptions, such a person may lawfully engage in activities that would otherwise constitute the practice of medicine, including the use of hypnosis.

In summary, using or offering to use hypnosis to diagnose, treat, prevent, cure or relieve a human disease, ailment, defect, complaint or other condition constitutes the practice of medicine. Nonetheless, a person may perform hypnosis without benefit of medical licensure if the person fits within one of the exemptions set forth in 1973 PA 185, § 16, *supra*.

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