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Constitutional Law--Substantive Due Process and Equal Protection--Naturopaths Required to Be Medical Doctors

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ling reasons involving the national safety or security are present", and that the Commissioner himself—not a subordinate as in the past—will certify that such secrecy is necessary. N.Y. Times, Nov. 4, 1956, §4E, p. 12, col. 2.

While the recognition of the problem is of some consolation, it may be argued that the doubtful use of confidential information will not be rectified by a mere shift in administrative responsibility.

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CONSTITUTIONAL LAW—SUBSTANTIVE DUE PROCESS AND EQUAL PROTECTION—NATUROPATHS REQUIRED TO BE MEDICAL DOCTORS.—Plaintiffs brought an original action in the supreme court of South Carolina for a declaratory judgment that an act making it unlawful for any person, whether previously licensed or not, to practice naturopathy in the state, unless he meets certain prescribed qualifications, was unconstitutional. *Held*, that the act does not deprive naturopaths of their property rights without due process of law or deny them equal protection of the law. *Dantzler v. Callison*, 94 S.E.2d 177 (S.C. 1956).

The power of the states to regulate and license the practice of certain callings has been universally accepted and stands virtually uncontroverted. *Lambert v. Yellowley*, 272 U.S. 581 (1926); *Hawker v. New York*, 170 U.S. 189 (1898); *Dent v. West Virginia*, 129 U.S. 114 (1889). A person's business, profession or occupation is "property" within the meaning of the constitutional provision as to due process of law. *People v. Love*, 289 Ill. 304, 131 N.E. 809 (1921). Thus, while the legislature can regulate a calling, it cannot prohibit it, unless the calling is inherently injurious to the public health, safety or morals, or has a tendency to become so. *Adams v. Tanner*, 244 U.S. 325 (1917). This power of regulation or prohibition is exercised by the legislature, and the courts refuse to consider the wisdom behind the action, confining themselves to the constitutional limitations which may be involved. *Zahn v. Board of Public Works*, 274 U.S. 325 (1927); *Adams v. Tanner, supra.* These limitations relate to the reasonableness of the action taken. When the legislature makes requirements which have no relation to a calling or are unattainable by reasonable study and application they may operate to deprive an individual of his constitutional property rights. *Butcher v. Maybury*, 8 F.2d 155 (W.D. Wash. 1925);

People v. Witte, 315 Ill. 282, 146 N.E. 178 (1924); *Dent v. West Virginia, supra.*

To require a chiropodist to obtain the license of a physician and surgeon or an osteopath is unreasonable. *State v. Armstrong*, 38 Idaho 493, 225 Pac. 491 (1923). Chiropody is limited to healing the feet. The allopathic, osteopathic and naturopathic theories of healing deal with every aspect of healing the entire body, internally and externally. It is doubtful that even the most credulous sufferer would call upon a chiropodist to cure a severe abdominal pain.

In this case the plaintiff alleged and the defendant admitted that the act *destroyed* the profession of naturopathy. The court, however, clearly shows that such a conclusion is erroneous. The act simply makes it unlawful for *certain persons* to practice naturopathy, whether previously licensed or not. It is, thus, regulatory and not prohibitory. Legalistically speaking, the requirements for prohibition set forth in *Adams v. Tanner, supra,* are inapplicable and need not be considered. However, for all practical intents and purposes, the practice of naturopathy as a separate branch of the healing arts has been prohibited. It is safe to assume that one who has been trained under the allopathic theory of healing will not hold himself out to the public as a naturopath.

The legislature is not required to accept every theory of healing which is advanced. *State Bd. of Medical Examiners v. Fife*, 274 U.S. 720 (1927). South Carolina, at first, accepted the naturopathic theory. S.C. CODE c. 56, §§ 901 to 919 (1952). However, a subsequent legislative investigation showed that the practice of the theory, by its very nature limited in curative devices, has been, or may very well be injurious to the public. A believing sufferer with an abdominal pain would very likely seek the aid of one who holds himself out to the public as a healer of all internal and external ills of the body. The legislature decided that it would prefer that the practitioner have more than one recognized curative theory available after diagnosis. The removal or transplanting of internal organs, (often the *only* recognized cure), does not fall within the limits of naturopathy.

Since accepting the naturopathic theory, the legislature has recognized the deficiency within it. It is well established that the state's legitimate concern for a high standard of professional conduct extends beyond acceptance of the theory and initial examining and licensing. *Barsky v. Board of Regents*, 347 U.S. 442 (1954). The

requiring of an examination and license without continuing supervision would provide little protection for the public. *Barsky v. Board of Regents, supra.*

The act herewith concerned is aimed at the practitioner, not at the science, and the line has been drawn where the legislature has found the practitioner to be "border-lining" the other recognized theories of healing. Where human lives are concerned, it is inadequate to provide merely a penalty for exceding limitations. This act erases the opportunity for "border-lining" by requiring a higher standard of skill and learning.

Such "border-lining" is evident among other professions also. An accountant, called upon to solve a tax problem, may inadvertently give his client purely legal advice. The same result may occur in the relationship between client and real estate broker. A nurse, in the normal course of her duties, might be guilty of practicing medicine without a license. However, it would clearly be unreasonable to require all accountants and real estate brokers to be lawyers and all nurses to be graduates of accredited medical colleges for doctors. Each of these professions is necessary to facilitate daily business and personal affairs and none is inherently dangerous. The most important distinction is that the titles attached to these professions and the definitions of the professions themselves do not mislead the public by appearing to show qualification in any other field.

The South Carolina legislature has determined that naturopaths are not adequately equipped to be general practitioners. Whether or not this determination was reasonable is, at most, fairly debatable. In such case it is clear that the court will not substitute its judgment for that of the legislature. *Zahn v. Board of Public Works, supra; Radice v. New York,* 264 U.S. 292 (1924); *Rast v. Van Deman & L. Co.,* 240 U.S. 342 (1916); *Price v. Illinois,* 238 U.S. 446 (1915); *Hadacheck v. Sebastian,* 239 U. S. 394 (1915); *Davis* v. *Beeler,* 185 Tenn. 638, 207 S.W.2d 343 (1947). See GELLHORN, INDIVIDUAL FREEDOM AND GOVERNMENTAL RESTRAINTS (1956).

C. R. S.

INSURANCE—ACCIDENTAL DEATH—NOTICE TO INSURER.—*A*, a resident of Virginia, purchased an airline ticket for an airplane trip from Newark to Provincetown. Before boarding the plane at Newark, he purchased from *B* an airline trip insurance policy with *A*'s wife, *C*, as beneficiary. The plane carrying *A* went down at sea and *A* was