

Opinion No. 31

**MEDICINE; Hypnosis; constitutes practice of medicine—LICENSES;
Hypnotism; constitutes practice of medicine—Section 66-1007,
RCM, 1947**

Held: The use of hypnosis in order to firmly fix a conditioned reflex against the ingestion of candies, high carbohydrate foods and excessive smoking is a violation of Section 66-1007, Revised Codes of Montana, 1947, prohibiting the practice of medicine without a license.

October 6, 1959

Dr. Thomas L. Hawkins
Secretary
Board of Medical Examiners
Helena, Montana

Dear Mr. Hawkins:

You have requested my opinion whether or not the use of hypnosis by a person other than a licensed physician in order to firmly fix a conditioned reflex against the ingestion of candies, other high carbohydrate foods and excessive smoking is a violation of the statute prohibiting the practice of medicine without a license.

Section 66-1007, Revised Codes of Montana, 1947, prohibits the practice of medicine without a license. This statute provides in part:

“. . . (2) **Any person** shall be regarded as practicing within the meaning of this article who shall append or affix the letters M.B. or M.D., or the title of Dr., or Doctor, or any other sign or appellation in a medical sense to his or her name, **who shall publicly profess** to be a physician or surgeon, who shall publicly profess either on his own behalf, in his own name, in his trade

name, or on behalf of any other person, corporation, association, partnership, either as manager, bookkeeper, solicitor, or other agent, **to cure, treat, relieve, or palliate any ailment, disease, or infirmity of the mind or body** of another by using or prescribing any drug, medicine, or surgical treatment, or who shall recommend, prescribe, or direct, for the use of any person, any drug, medicine, appliance, apparatus, or **other agency**, whether material or not material, **for the cure, relief, or palliation of any ailment or disease of the mind or body**, or for the cure or relief of any wound, fracture, or bodily injury, or other deformity, after having received, or with the intent of receiving therefor, either directly or indirectly, any bonus gift, or compensation; . . ." (Emphasis added.)

"Hypnotism" is defined to be a name applied to a condition artificially produced in which the person hypnotized, apparently asleep acts in obedience to the will of the operator; and we are told by authorities upon the science that upon awakening there may be a vivid recollection of all that happened during the apparent sleep." *Austin v. Barker*, 96 NYS 814, 110 App. Div. 510.

The use of hypnotism in the situation outlined in your letter is obviously intended to treat infirmities of both mind and body; the physical condition of obesity, and the mental and psychological inability of the person to cope with this condition without professional assistance. This certainly falls within the language of the statute emphasized above.

The Indiana Supreme Court in the case of *Parks v. State* 64 N.E. 862, 159 Ind. 211 pointed out the inherent danger in the use of hypnosis in upholding the conviction of the defendant for practicing medicine without a license by using hypnotism to treat ailments of his patients. The Court in this case said:

"Hypnotism or animal magnetism is a peculiar physiological condition excited by perverted action of certain parts of the cerebral nervous system . . . It is clear that the perverted condition of the apparatus in hypnotism is of a serious character . . . The medical profession has always been rightly jealous of the employment of hypnotism in the treatment of disease from the fear of the effect of such operations on the nervous systems of excitable people."

The use of hypnotism to firmly fix a conditioned reflex against the ingestion of candies or other high carbohydrate foods and excessive smoking is a clear violation of the statute prohibiting the practice of medicine without a license. Hypnotism, in the case under discussion, is being used to "treat . . . an ailment . . . of the mind or body." It is a treatment of the mind to remedy the lack of will power and a treatment of the body to cure obesity.

It is therefore my opinion that the use of hypnosis by a person other than a licensed physician in order to firmly fix a conditioned

reflex against the ingestion of candies, other high carbohydrate foods and excessive smoking is a violation of Section 66-1007, RCM, 1947, prohibiting the practice of medicine without a license.

Very truly yours,
FORREST H. ANDERSON
Attorney General