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OPINION	:	No. 83-904
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THE HONORABLE GERALD N. FELANDO, MEMBER OF THE ASSEMBLY, has requested our opinion on the following question.

Do the "reciprocity" provisions of article 7 of the Medical Practice Act, and particularly those of section 2135 thereof, apply to the Board of Osteopathic Examiners' licensure of doctors of osteopathic medicine?

CONCLUSION

The "reciprocity" provisions of article 7 of the Medical Practice Act, including those of section 2135, do apply to the licensure of doctors of osteopathic medicine by the Board of Osteopathic Examiners.

ANALYSIS

Article 7 of the state's Medical Practice Act (Bus. & Prof. Code, div. 2, ch. 5, § 2000 et seq.)^{1/1} establishes the requirements for and the procedures under which the Division of Licensing of the Board of Medical Quality Assurance will issue a reciprocity certificate enabling an allopathic physician licensed in another state to become licensed to practice medicine in California. The question presented is whether those provisions also govern the requirements for and the procedures under which the Board of Osteopathic Examiners issues reciprocity certificates to out-of-state osteopathic physicians. Upon review of article 7 of the Medical Practice Act and the turbulent history of the "Osteopathic Act" we will conclude that the provisions of article 7, including those of section 2135 found therein, do apply to and do govern that reciprocity licensure.

Osteopathy and *allopathy* are two of the several approaches to the practice of medicine, others being *homeopathy*, *naturopathy*, and the *eclectic*. (64 Ops.Cal.Atty.Gen. 672, 674 & 674 fn. 3 (1981).) *Osteopathy* began as a system of healing based on the theory that all diseases were caused by irregularities in the musculoskeletal structure of the body which could be corrected by manipulation and the body's intrinsic ability to heal itself without the use of drugs. (*D'Amico v. Board of Medical Examiners* [*D'Amico I*] (1970) 6 Cal.App.3d 716, 721; 64 Ops.Cal.Atty.Gen., *supra*, at 673-674; cf. Gk. *osteon* = bone + *pathos* = suffering, disease.) Osteopaths were first licensed in California under the Statutes of 1901 (Stats. 1901, ch. XCIX, p. 113) which provided for a state Board of Osteopathic Examiners whose licensees could not prescribe drugs or practice major surgery. *Allopathy* is "an erroneous designation for the regular system of medicine and surgery. The term really means the curing of diseased action by inducing a different kind of action in the body." (*Board of Osteopathic Examiners v. Board of Medical Examiners* (1975) 53 Cal.App.3d 78, 81 fn. 2.) In other words, it is a method of treating disease by employing remedies that will produce effects opposite from those that are being produced by the disease being treated (e.g., a disease which causes an increased rapidity of heartbeat would be treated with a drug which slows the beat). (Cf., Gk. *allos* = other + *pathos* = suffering, disease.) Allopaths have been licensed in California since at least 1876. (Stats. 1875-1876, ch. DXVIII, p. 792; Stats. 1877-1878, ch. DLXXVI, p. 918; Stats. 1901, ch. LI, p. 56.)²

¹ Unidentified section references will be to the Business and Professions Code.

² The practice of medicine in California was first regulated in 1876 (Stats. 1875-76, p. 792). In that year the Legislature empowered each state medical society incorporated in the state whose members possessed diplomas or licenses from legally chartered medical schools to establish a board of examiners each consisting of seven members. Each board was empowered to issue a certificate to practice medicine without examination to any physician who possessed a diploma or license described above; any person who practiced medicine but did not possess such a diploma or license was examined by the board before the issuance of a certificate. This "grandparent

For all intents and purposes the differences between the two systems of medicine have all but disappeared today. (*D'Amico v. Board of Medical Examiners [D'Amico II]* (1971) 11 Cal.3d 1, 11, 23-24, & 11 fn. 4.) The original theory of osteopathy has become less important to its practice and, like allopathy, it has evolved into a "complete school of medicine and surgery whose practitioners successfully engage in the full range of activities commonly thought of as constituting medical science, including manipulation, treatment by drugs, operative surgery and physical therapy." (*Id.*, at 23.) Colleges of osteopathy now have curricula more or less identical with those of allopathic medical schools, with both teaching bio-mechanical physiology and the modality of manipulation (64 Ops.Cal.Atty.Gen., *supra*, at 674 & 674 fn. 4), and the A.M.A. considers osteopathic background and education the equivalent of allopathic background and education for purposes of membership on its specialty boards. (*D'Amico II*, *supra*, at 11 fn. 4.) Indeed, the California Legislature has declared it to be the policy of this state for "holders of M.D. degrees and D.O. degrees [to] be accorded equal professional status and privileges as licensed physicians and surgeons", and it has provided that no governmental agency or licensed health facility may discriminate between them on the basis of their degree. (§ 2453.)

Nevertheless, as a result of "the pitched battle that has raged between the osteopathic and allopathic professions since the turn of the century—and the various . . . acts which have littered the field" (*D'Amico II*, *supra*, at 8), separate regulatory bodies now regulate the two professions: allopathic physicians are governed by the Board of Medical Quality Assurance administering the Medical Practice Act, while osteopaths fall under the jurisdiction of the Board of Osteopathic Examiners, administering the "Osteopathic Act." We deliberately place the latter in quotations, for it is an amorphous term which, because of historical circumstances, embraces at least three enactments—*viz*, the Osteopathic [Initiative] Act of 1922 (Stats. 1923, p. xciii), the Osteopathic [Referendum] Act of 1962 (Stats. 1963, First Ex. Sess. 1962, ch. 48, pp. 337-338) and, insofar as consistent with those measures, the state the state Medical Practice Act vis-a-vis osteopathic physicians. (§§ 2450, 2452;³ *Board of Osteopathic Examiners v. Board of Medical Examiners*, *supra*,

provision" was operative only until December 31, 1876. In 1878 (Stats. 1877-78, p. 918) the previous act was amended to provide for boards of examiners from only the Medical Society of the State of California, which represented allopathic practitioners, the Eclectic Medical Society of the State of California and the California State Homeopathic Medical Society.

³ Section 2450 provides in part:

There is a Board of Osteopathic Examiners of the State of California, established by the Osteopathic Act, which enforces the provisions of this . . . [Medical Practice Act] relating to persons holding or applying for physician's and surgeon's certificates issued by the Board of Osteopathic Examiners under the Osteopathic Act."

Section 2452 provides that "the provisions of [the Medical Practice Act] apply to the Board of

53 Cal.App.3d at 85, 86, 87; cf. *Gamble v. Bd. of Osteopathic Examiners* (1942) 21 Cal.2d 215, 218-219; 64 Ops.Cal.Atty.Gen., *supra*, at 677; *Osteopathic Physicians & Surgeons v. Cal. Medical Assn.* (1964) 224 Cal.App.2d 378, 382.)

As noted introductorily, the provisions of article 7 of the Medical Practice Act set forth the conditions under which the Division of Licensing is to issue a certificate on reciprocity to an out-of-state allopath applicant to practice medicine in California. Not surprisingly those provisions speak in allopathic terms -- to wit, the *Division of Licensing* (one of the three divisions comprising the Board of Medical Quality Assurance (§ 2003) and responsible, inter alia, for issuing licenses and certificates under the Board's jurisdiction (§ 2005(a))), the practice of *medicine*, *medical schools*, *physicians and surgeons* and *physicians' and surgeons' certificates*. For example, troublesome section 2135 provides generally for the *Division of Licensing* to issue a *physician's and surgeon's* certificate on reciprocity without examination if the applicant holds a license *to practice medicine* in another state, and if he or she had been granted *the degree of doctor of medicine* after completion of a resident course of professional instruction in an *approved medical school*. And a companion, section 2136, provides for the issuance by the *Division of Licensing* of a *physician's and surgeon's certificate* on reciprocity following an oral and comprehensive clinical examination, if the applicant is licensed as a *physician and surgeon* and has practiced *medicine* in another state for four years and the *Division* determines that its written examination is equivalent to California's. (See fn. 10, *post*.) The other sections of article 7 are similarly cast,⁴ and, once again, the question to be answered is whether

Osteopathic Examiners so far as consistent with the Osteopathic Act.”

⁴ Section 2140 provides that an applicant's professional instruction (medical education) and the requirements of the other state's *medical licensing authority* must not be "in any degree or particular less" than the contemporaneous California requirements. Section 2142 sets forth certain requirements with which an applicant for a reciprocity certificate must comply (e.g., listing his or her licenses to practice medicine and educational and residency histories; *furnishing evidence of completion of medical school*; not having committed acts or crimes constituting cause for denial of a license). These are in addition to any other information "*the Division of Licensing*" might require of the reciprocity applicant. (§ 2142.) Section 2143 dispenses with the need for a reciprocity applicant to have completed one year of postgraduate training in a hospital in another state prior to the issuance of a license there if he or she completes it prior to his or her application to "*the Division of Licensing*" for reciprocity licensure in California. (§ 2143.) Section 2144 provides that "*the Division of Licensing*" may make an independent investigation of the . . . qualifications . . . of the applicant" and if it is found that the requirements of the other state's medical licensing authority were in any degree or particular less than California's were it may require the applicant to "tak[e] and pass an examination administered *by the division*." Section 2146 provides that no reciprocity certificate be issued where either state licensure did not require a written examination. Section 2148 requires that a reciprocity applicant have obtained his certificate or license upon which his or her reciprocity application is based within "five years

article 7, and especially section 2135 which is of particular concern, applies to the Board of Osteopathic Examiners' licensing osteopathic examiners. To answer it we look to the "Osteopathic Act" for it creates and defines the powers of that Board. (Cf. Gov. Code, §§ 11342.1, 11342.2; *Agricultural Relations Bd. v. Superior Court* (1976) 16 Cal.3d 392, 419; *Ferdig v. State Personnel Bd.* (1969) 71 Cal.2d 96, 105; *City of San Joaquin v. State Bd. of Equalization* (1970) 9 Cal.App.3d 305, 314; *Conover v. Board of Equalization* (1941) 44 Cal.App.2d 283, 287.) That in turn involves our understanding the evolution of that "Act." (Cf. 64 Ops.Cal.Atty.Gen., 672, 675, *supra*.)

Whereas osteopaths had originally been licensed separately from allopaths (cf. Stats. 1901, ch. XCIX, *supra*; Stats. 1901, ch. LI, *supra*), in 1907 the Legislature "repealed" the separate "medical" and osteopathic licensing statutes and enacted a general Medical Act in their place which brought both schools under the aegis of a single licensing authority, a Board of Medical Examiners composed of both allopaths and osteopaths. (Stats. 1907, ch. 212, p. 252.) While "osteopathy was not [considered] the same as medicine and surgery . . . some osteopaths were licensed under the act of 1907 to practice medicine and surgery." (*D'Amico I, supra*, 6 Cal.App.2d at 716; *Board of Osteopathic Examiners v. Board of Medical Examiners, supra*, 53 Cal.App.3d at 81.) The unity of licensing authority was continued when the Act of 1907 was repealed and replaced in 1913 by a new Medical Practice Act. (Stats. 1913, ch. 354, p. 723.) Under that Act, osteopaths who could qualify were licensed by the Board of Medical Examiners to practice medicine and surgery (*Board of Osteopathic Examiners v. Board of Medical Examiners, supra*), and between 1913 and 1922 the Board granted at least 288 physicians and surgeons licenses to osteopaths. (*D'Amico I, supra*, 6 Cal.App.3d at 722.) The 1913 statute however did not *require* osteopathic physicians to be represented on the licensing board. (Stats. 1913, ch. 354, § 1, p. 723.) Needless to say tensions between the two schools reached a crescendo in 1919 when the Board, then firmly in control of allopaths, refused to examine any more graduates of osteopathic schools and withdrew its approval of the only osteopathic college in this state. (*D'Amico I, supra*, 6 Cal.App.3d at 722; *Board of Osteopathic Examiners v. Board of Medical Examiners, supra*, 53 Cal.App.3d at 81.) Despite vindication of the osteopaths' position in *College of Osteopathic Physicians & Surgeons v. Board of Medical Examiners* (1921) 53 Cal.App. 138—where the court held the college was entitled to the

immediately preceding the filing of the application at the office of the *Division of Licensing in Sacramento*"; if it is not, the applicant is required to "take and pass an oral examination administered by the *Division of Licensing*." (2147.) Section 2148 provides for the administration of that oral and comprehensive clinical examination by *the Division of Licensing*. Finally, section 2151 provides the circumstances under which *the Division of Licensing* may issue a *physician's and surgeon's certificate* to a diplomate of the National Board of Medical Examiners, notwithstanding any other provision of law.

approval of the Board and its graduates to examination and admission to the practice of medicine and surgery (*id.*, at 139)—those tensions continued.

In 1922, it having become apparent that osteopaths and allopaths could not "live under the same roof" of a singular licensing scheme, the osteopaths succeeded in obtaining passage of an initiative measure which established an independent Board of Osteopathic Examiners with jurisdiction, formerly residing in the Board of Medical Examiners, over osteopathic schools, graduates and physicians. (*D'Amico I, supra; Board of Osteopathic Examiners v. Board of Medical Examiners, supra; Gamble v. Bd. of Osteopathic Examiners, supra*, 21 Cal.2d at 217.) Section 2 of the Osteopathic [Initiative] Act of 1922 set forth the jurisdiction of the Osteopathic Board as follows:

"SEC. 2. *All persons who are graduates of osteopathic schools and who desire to apply for any form of certificate mentioned or provided for in the state medical practice act, approved June 2, 1913, and all acts amendatory thereof, shall make application therefor, to said board of osteopathic examiners and not to the board of medical examiners of the State of California. The board of osteopathic examiners in respect to graduates of osteopathic schools, applying for any form of certificate mentioned or provided for in the state medical practice act, approved June 2, 1913, and all acts amendatory thereof, is hereby authorized and directed to carry out the terms and provisions of the state medical practice act, approved June 2, 1913, and all acts amendatory thereof, and all laws hereafter enacted prescribing and regulating the approval of schools, the qualifications of applicants for examination for any form of certificate, the applications for any form of certificate, the admission of applicants to examinations for any form of certificate, the conduct of examinations, the issuance of any form of certificate, the collection of fees from applicants, the collection of an annual tax and registration fee, the compilation and issuance of a directory, the revocation of any form of license or certificate, the prosecution of persons who attempt to practice without a certificate, and all other matters relating to the graduates of osteopathic schools, holding or applying for any form of certificate or license. . . . Said board of osteopathic examiners shall, in respect to all the matters aforesaid, relating to graduates of osteopathic schools, applying for or holding any form of certificate or license, take over, exercise and perform all the functions and duties imposed upon and heretofore exercised or performed by the board of medical examiners of the State of California under the provisions of the state medical practice act, approved, June 2, 1913, and acts amendatory thereof. The provisions of said state medical practice act, approved June 2, 1913, and acts amendatory thereof are hereby declared to be applicable to said board of osteopathic*

examiners in respect to all of the aforesaid matters and all other matters now or hereafter prescribed by law relating to the graduates of osteopathic colleges holding or applying for any form of certificate or license. . . . From and after the time of the organization of the board of osteopathic examiners said board of medical examiners of the State of California, shall have no further jurisdiction, duties or functions with respect to graduates of osteopathic schools holding or applying for any form of certificate or license and the said jurisdiction, duties and functions shall be assumed and performed by said board of osteopathic examiners." (Stats. 1923, pp. xciv-xcv, § 2; emphases added.)

What section 2 did then, was to make the provisions of the 1913 Medical Practice Act "prescribing and regulating . . . applications for *any* form of certificate" and "the issuance of *any* form of certificate," as those provisions existed in 1913 *or as they might subsequently be amended* (cf. *Gamble v. Board of Osteopathic Examiners*, *supra*, 21 Cal.2d at 217-219), applicable to the Board of Osteopathic Examiners' licensure of graduates of osteopathic schools (D.O.'s), and it directed that Board to "carry [them] out" with respect to such licensure. As a result, "the Medical Board continued to issue the physician's and surgeon's certificate to graduates of medical schools with M.D. degrees, and the Osteopathic Board began to issue the identical legislative physician's and surgeon's certificate to graduates of osteopathic schools with D.O. degrees, both under identical legislative standards of education and examination." (*Board of Osteopathic Examiners v. Board of Medical Examiners*, *supra*, at 81; *Gamble v. Bd. of Osteopathic Examiners*, *supra*, at 217.) Specifically with respect to the issuance of certificates by way of reciprocity, since section 13 (and § 8) of the Medical Practice Act of 1913 made provision for the Medical Board to grant specially endorsed physicians and surgeons "reciprocity certificates" to allopaths licensed to practice medicine in another state and to issue such reciprocity certificates without examination if certain conditions were met (Stats. 1913, ch. 354, § 13, p. 730; cf. *id.*, § 8, p. 725)⁵, by virtue of section 2 of the Osteopathic [Initiative] Act of

⁵ Section 8 of the 1913 Medical Practice Act provided:

"Two forms of certificates shall be issued by said board . . . ; first, a . . . 'physician and surgeon certificate'; second, a . . . 'drugless practitioner certificate.' A 'reciprocity certificate' shall also be issued under the provisions hereinafter specified."

Those "provisions" were found in section 13 which provided in part:

"SEC. 13. *Said board must also issue a 'physician and surgeon certificate' to any applicant, without any examination, authorizing the holder thereof to practice medicine and surgery in the State of California, upon payment of a registration fee of fifty dollars (\$50.00), upon the following terms and conditions and upon satisfactory proof thereof, viz: The applicant shall produce a certificate entitling him to practice medicine and surgery, as provided for in said 'physician and surgeon certificate,' issued either by the*

1922, those reciprocity provisions were made equally applicable to the licensing of D.O.'s by the Osteopathic Board. And, as contemplated by section 2, that applicability continued when said reciprocity provisions were amended and transferred to other sections of the Medical Practice Act (including § 2310) with the Act's amendment and recodification in 1937. (Stats. 1937, ch. 399 (414), p. 1254 (1377)).⁶

In 1962, however, the California voters passed Proposition 22, a *referendum* measure (Stats. 1963, First Ex. Sess. 1962, ch. 48, pp. 337-338; hereinafter, "the

medical examining board, or by any other board or officer authorized by the law to issue a certificate entitling such applicant to practice medicine and surgery, either in the District of Columbia, or in any state or territory of the United States, or if such certificate shall have been lost, then a copy thereof, with proof satisfactory to the board of medical examiners of the State of California that the copy is a correct copy. Said certificate must not have been issued to such applicant prior to the first day of August, 1901, and the requirements from the medical college from which such applicant may have graduated, and the requirements of the board which was legally authorized to issue such certificate permitting such applicant to practice medicine and surgery shall not have been, at the time such certificate was issued, in any degree or particular less than those which were required for the issuance of a certificate to practice medicine and surgery in the State of California at the date of the issuance of such certificate, or which may hereafter be required by law and which may be in force at the time of the issuance of any such certificate; and provided, further, that said applicant shall also furnish from the board which issued said certificate, evidence satisfactory to the board of medical examiners of the State of California, showing what the requirements were of the college, or board, issuing such certificate, at the date of such issuance. If, after an examination of such certificate, and the production on the part of the applicant of such further reasonable evidence of the said requirements as may be deemed necessary by the board of medical examiners of the State of California, and any other or further examination or investigation which said board may see fit to make, on its own part, it shall be found that the requirements of the board issuing such certificate were, when said certificate was issued, in any degree or particular less than the requirements provided by the laws of the State of California, at the date of the issuance of such certificate, he will not be entitled to practice within the State of California without an examination. . . . All certificates issued pursuant to this section shall be marked across the face thereof 'reciprocity certificate.' [See now § 2153.]" (Emphases added; Stats. 1913, ch. 354, § 13, p. 730.)

⁶ When the Medical Practice Act of 1913 was amended and recodified in 1937 (Stats. 1937, ch. 399, *supra*) the provisions of section 13 were dispersed in part to new sections 2310, 2311, 2312, 2314, 2315, 2316, 2317, 2320, and 2321. Those in turn were transferred respectively to their current places at sections 2135, 2153, 2141, 2142, 2147, 2140/2142, 2140, 2144, and 2147 when the Medical Practice Act was amended and recodified in 1980. (Stats. 1980, ch. 1313, p. 4445, § 2.)

Osteopathic Act" of 1962)⁷ to "amend" the Osteopathic [Initiative] Act of 1922 as part of an effort to facilitate a complete merger between osteopaths and allopaths by "unify[ing] the separate organizations which existed in parallel structure . . . for the practice of medicine and surgery by persons who [held] the degree of Doctor of Osteopathy and those who [held] the degree of Doctor of Medicine." (*D'Amico I, supra*, 6 Cal.App.3d at 723, quoting *Osteopathic Physicians & Surgeons v. Cal. Medical Assn.* (1964) 224 Cal.App.2d 378, 397; see also *Board of Osteopathic Examiners, supra*, 53 Cal.App.3d at 81-82, quoting the same.) In a recent opinion we explained the scenario wrought by the 1962 measure:

"Section 2 of the 1922 initiative, which, inter alia, had charged the Osteopathic Board with enforcing vis-a-vis osteopaths those provisions of the Medical Practice Act dealing with approval of medical schools and *licensure of their graduates*, was repealed (Stats. 1963, 1st ex. Sess. 1962, ch. 48, p. 337, § 1) and, in conjunction with an amendment to section 2396 (Stats. 1961, ch. 969, p. 2610, § 1) and the addition of section 2451.3 (Stats. 1962, 1st Ex. Sess., ch. 49, § 1), all existing 'D.O.'s' were invited to convert to 'M.D.'s' and come under the jurisdiction of the Medical Board. The Osteopathic Board was accorded the diminished jurisdiction of enforcing with respect to the unconverted remainder *only* those portions of the Medical Practice Act dealing with discipline of licentiates and their local registration. (Stats. 1963, 1st Ex. Sess., 1962, ch. 48, *supra*, § 2.) While the measure was silent on the matter, it was contemplated that there would be no new osteopaths licensed in California. (*D'Amico I, supra*, 6 Cal.App.3d at p. 724.) Indeed, it was specifically anticipated that the Osteopathic Board itself would cease to exist when the number of remaining osteopaths fell below 40. (*Ibid.*; Stats. 1963, 1st Ex. Sess., 1962, ch. 48, *supra*, § 3.) The 1962 measure thus effectively forbade the *further issuance of licenses to osteopaths* . . . [by the] Osteopathic Board. . . . (*Board of Osteopathic Examiners v. Board of Medical Examiners, supra*, at p. 86; *D'Amico I, supra*, 6 Cal.App.3d at pp. 723-724.)" (64 Ops.Cal.Atty.Gen., *supra*, at 676; fn. omitted; emphasis added.)

The 1962 Osteopathic Act thus repealed the essence of the board's authority that had been found in section 2 of the 1922 Osteopathic Act, including its authority to license graduates of osteopathic schools. It made no provision for *any* continued examination and licensure

⁷ Unlike the Osteopathic Act of 1922 which was enacted by initiative, Proposition 22 was a *referendum* measure, written and passed by the Legislature and submitted to the People. (*D'Amico II, supra*, 11 Cal.3d at 6, fn. 1.) It has erroneously been referred to as having been an *initiative* measure. (E.g., *Board of Osteopathic Examiners v. Board of Medical Examiners, supra*, 53 Cal.App.3d at 82, 85, 86, 87, & 84 fn. 7.)

of osteopathic applicants by the Board, *by way of reciprocity or otherwise*, for it was then contemplated that there would be no new osteopaths licensed in California. (*D'Amico I, supra*, 6 Cal.App.3d at 724.) As part of the "package" to achieve that result, section 2310 of the Medical Practice Act (to which the reciprocity section of the 1913 Medical Practice Act (§ 13) had been transferred in part in 1937) (see fn. 6, *ante*) was also amended to specify that a reciprocity license could only be issued to physicians *who possessed a doctor of medicine degree*. (Stats. 1963, 1st Ex. Sess., 1962, ch. 46, p. 672, § 1.)

The 1962 enactments thus saw the Osteopathic Board shorn of its former authority and left with only a truncated custodial jurisdiction over existing osteopaths who chose not to convert to M.D. licensure and come under the aegis of the Medical Board. But even that was temporary; as there were to be no new osteopaths licensed in California (*D'Amico II, supra*, 11 Cal.3d at 10, fn. 6; *D'Amico I, supra*, 6 Cal.App.3d at 723-724; *Board of Osteopathic Examiners v. Board of Medical Examiners, supra*, 53 Cal.App.3d at 86), the discipline was expected to become extinct with the passage of time and the Board a vestige along with it. (Stats. 1963, 1st Ex. Sess., 1962, *supra*, § 3; *D'Amico I, supra*, 6 Cal.App.3d at 723-724 & 724 fn. 2.)

But that was not to be. In 1974, in *D'Amico II*, our Supreme Court "held that those portions of the 1962 enactments [⁸] which denied new osteopaths an opportunity for licensure as such violated the equal protection clauses of both the federal and state constitutions since that denial bore no rational relationship to any conceivable legitimate state purpose." (64 Ops.Cal.Atty.Gen., *supra*, at 676.) Finding no facts to justify the distinction between allopaths and osteopaths made by those enactments, the court said:

"[T]here exists no rational relationship between the protection of the public health and the exclusion from licensure of *all* medical practitioners who have received their training in an osteopathic rather than an allopathic college and hold D.O. rather than M.D. degrees.

".....

"[W]e hold that the 1962 enactments, insofar as they forbid the licensure of graduates of osteopathic colleges as physicians and surgeons in

⁸ The enactments spoken of were: (a) the 1962 Osteopathic [Referendum] Act, *and* (b) the amendment to section 2310 of the Medical Practice Act (Stats. 1963, 1st Ex. Sess., 1962, ch. 46, § 1, *supra*) which provided that only those holding an *M.D. degree* would be eligible for a reciprocity certificate. (*D'Amico II, supra*, 11 Cal.2d at 8, 11-12.) This is crucial to bear in mind because the amendment to section 2310 was the precursor of troublesome section 2135, subdivision (c). (See fn. 11, *post*.)

this state regardless of individual qualifications, deny to plaintiffs the equal protection of the laws guaranteed by our state and federal Constitutions *and are therefore to that extent void and of no effect*. Accordingly, as the trial court determined, plaintiffs are entitled to be considered for licensure, either as 'new' physicians and surgeons or on the basis of reciprocity, according to the provisions of the Osteopathic and Medical Practice Acts which were applicable immediately prior to the 1962 amendments." (*D'Amico II, supra*, 11 Cal.3d at 23- 24; original emphasis in first paragraph.)

As a consequence of *D'Amico II*, the 1962 attempt to repeal section 2 of the 1922 Osteopathic [Initiative] Act—which had vested the Osteopathic Board with the authority and directed it to carry out those provisions of the Medical Practice Act with respect to osteopaths such as approving osteopathic schools and *licensing their graduates by way of reciprocity* or otherwise—was nullified, and the section was restored to "full operative vigor." (*Board of Osteopathic Examiners v. Board of Medical Examiners, supra*, 53 Cal.App.3d at 86.) As we recently observed, "the net of this restoration was a renewal of the Osteopathic Board's authority under section 2 to administer those provisions as they related to osteopaths" (64 Ops.Cal.Atty.Gen. 672, 67), and thus, after "a decade of desuetude", section 2 rose phoenix-like to once again have the Board of Osteopathic Examiners, "in respect to graduates of osteopathic schools *applying for any form of certificate mentioned* in the state medical practice act, approved June 2, 1913, and all acts amendatory thereof. . . authorized and directed to carry out the terms and provisions of [that] act and *all acts amendatory thereof*, and all laws hereafter enacted providing and regulating . . . the *applications for any form of certificate* [and] . . . *the issuance of any form of certificate*." (Stats. 1923, pp. XCIV-XCV, § 2, *supra*.)

The revival of the Board of Osteopathic Examiners' authority to carry out the provisions of the Medical Practice Act concerning the applications of graduates of osteopathic schools for "any form of certificate [or license]" and "the issuance of any form of certificate" surely encompasses the authority to entertain applications of out-of-state osteopaths for *reciprocity certificates*, since that type of licensure has been found in the Medical Practice Act as far back as 1913. (Stats. 1913, ch. 354, *supra*, § 8, 13; see fns. 5 & 6, *ante*.) We, therefore, conclude that the provisions of article 7 of the Medical Practice Act govern the Board of Osteopathic Examiners' issuance of reciprocity certificates to out-of-state osteopathic physicians.

That conclusion is confirmed when we approach the question through the "eye" of the Medical Practice Act even though its provisions dealing with reciprocity (i.e., those of art. 7) speak, as we have seen, with an allopathic tongue. (See fn. 4, *ante*, & preceding and accompanying text.)

In section 2450 of the Medical Practice Act, the Legislature has recognized the existence of the Board of Osteopathic Examiners and that it "enforces provisions of the Medical Practice Act relating to persons holding or applying for a physician's and surgeon's certificate issued by it under the Osteopathic Act". (§ 2450; fn. 3, *ante.*) In section 2452 it has made, as the Osteopathic Act of 1922 had made, the provisions of the Medical Practice Act "[applicable] to the Board of Osteopathic Examiners so far as consistent with the Osteopathic Act". (§ 2452; fn. 3, *ante.*) As we have seen, the granting of reciprocity certificates by the Osteopathic Board following the provisions for doing so described in the Medical Practice Act is not only entirely "consistent" with the Osteopathic Act, *but is specifically commanded by it*. As we shall now see, but for the troublesome reference in section 2135 to "persons who have been granted the degree of doctor of medicine", the allopathic terminology in article 7 will not support an effort to compromise that consistency and a claim that the provisions do not apply to licensure of osteopaths.

Article 7 does contain terms which are cast allopathically, e.g., "Division of Licensing", "practice of medicine", "(approved) medical schools and education", "physician and surgeon", "physician's and surgeon's certificates", and "medical licensing authority". (See fn. 4 & accompanying and preceding text paraphrasing §§ 2135-2151.) But, as we proceed to explain, their appearance as such is only chimerical when they are properly considered in historical context and together with other sections of the Medical Practice Act.

Section 2451 of the Medical Practice Act is obviously an effort by the Legislature to deal with the fact that while many of the Act's provisions, such as those found in article 7, speak in allopathic terms they are nonetheless meant to apply to the Board of Osteopathic Examiners. The section provides:

"The words 'Board of Medical Quality Assurance,' the term 'board', or any reference to a division of the Board of Medical Quality Assurance as used in this chapter shall be deemed to mean the Board of Osteopathic Examiners, *where that board exercises the functions granted to it by the Osteopathic Act.*"

The issuance of certificates by way of reciprocity is, as we have just seen, a "function granted the Osteopathic Board" by the "Osteopathic Act." Thus section 2451 serves to change the allopathic references to the "*Division of Licensing*" wherever found in the "reciprocity" article 7 into references to the Osteopathic Board. And, as we had occasion to see in a recent opinion (64 Ops.Cal.Atty.Gen. 672, *supra*), when taken in conjunction with other provisions of the Medical Practice Act, section 2451 also serves to mutate other allopathically cast terms as well. For example, we concluded therein that the exemption found in section 2064 for a regularly matriculated student in an *approved*

medical school to engage in the practice of *medicine* without a license, whenever and wherever prescribed as part of his or her course of study, should be read and applied to students regularly matriculated in *osteopathic schools* approved by the Board of Osteopathic Examiners. (64 Ops.Cal.Atty.Gen., *supra*, at 673, 677.) Thus for the references in article 7 to a "resident course of professional instruction in an *approved medical school*", we may read a "resident course of professional instruction in an approved osteopathic school", on the basis of the reasoning of our recent opinion (§ 2451 + §§ 2037, 2084, 2005(a)), and indeed because the Legislature (§ 2453) and the courts (*D'Amico II*, *supra*, 11 Cal.3d at 11, & 11 fns. 7, 8, 22-24) in effect have equated the two.

The references to a "*physician's and surgeon's certificate*" need not give pause, because that appellation has historically been applied, without distinction, to the certificates of licensure issued D.O.'s by the Osteopathic Board as it has to the certificates of licensure issued M.D.'s by the Medical Board. (*Board of Osteopathic Examiners v. Board of Medical Examiners*, *supra*, 53 Cal.App.3d at 81; *Gamble v. Board of Osteopathic Examiners*, *supra*, 21 Cal.2d at 215, 217.) In fact, since 1913 a physician's and surgeon's certificate has been the *only* authorized means which would permit an osteopath to practice osteopathy in this state. (Compare, Stats. 1907, ch. 212, *supra* (three types of certificates issued: medicine and surgery, osteopathy and any other mode or system not referred to in the act) with Stats. 1913, ch. 354, *supra* (only two types of certificate issued (besides the "reciprocity certificate", so specially endorsed): a physician and surgeon certificate and a drugless practitioner certificate; see fn. 5, *ante*); cf. Stats. 1937, ch. 399 (414), p. 1283 (former § 2492 (Board of Osteopathic Examiners to issue physician's and surgeon's certificate on reciprocity)); *D'Amico II*, *supra*, 11 Cal.3d at 6, 10, 22, 24 & 10 fn. 6.) Similarly, the references to a "*physician and surgeon*" would be as equally applicable to osteopaths as they are to allopaths. (*Ibid.*; cf. § 2050 ("The *Division of Licensing* [substitute, Board of Osteopathic Examiners per § 2451] shall issue one form of certificate *to all physicians and surgeons* licensed by the board [of Medical Quality Assurance, substitute, Board of Osteopathic Examiners] which shall be designated as a 'physician's and surgeon's certificate.'").)

We have no problem with the term "*medical licensing authority*", since it is defined by section 2034 as "*any officer, board, commission of another state upon whose certificate a reciprocity certificate may be issued.*" Nor should the references to the "*practice of medicine*" prevent the applicability of article 7 to reciprocity certificates being issued by the Osteopathic Board, for although allopathy has assumed that mantle as its own preserve, its equal applicability to other schools of practice such as osteopathy cannot be questioned. (*Board of Osteopathic Examiners v. Board of Medical Examiners*, *supra*, 53 Cal.App.3d at 81, fn. 2; 64 Ops.Cal.Atty.Gen. 672, 673-674; cf. §§ 2051, 2052 (practices authorized by physician's and surgeon's certificate, tantamount to a definition of the

practice of medicine (*Bowland v. Municipal Ct.* (1976) 18 Cal.3d 479, *passim*; 64 Ops.Cal.Atty.Gen. 240, 243 (1981)).)

Their being allopathically cast then, does not prevent the provisions of article 7 from applying to the reciprocity licensure of osteopaths by the Osteopathic Board, and we conclude that they do so apply. (§§ 2450, 2452; Osteopathic Act of 1922, § 2.)⁹

Special attention must of course be given to section 2135 which is of particular concern because its subdivision (c) makes the section applicable only to "persons who have been granted the *degree of doctor of medicine*", (i.e., an M.D. degree) and question is rightly raised as to whether that could ever apply to an osteopathic graduate

⁹ It is the *current* provisions of the Medical Practice Act relating to reciprocity which are applicable and not those which existed in 1962. It is true that in *D'Amico II*, the court concluded:

"Accordingly, as the trial court determined, plaintiffs are entitled to be considered for licensure, either as 'new' physicians and surgeons *or on the basis of reciprocity, according to the provisions of the Osteopathic and Medical Practice Acts which were applicable immediately prior to the 1962 amendments.*" (11 Cal.3d at 24; emphasis added.)

But we do not believe that the court ever meant to suggest that subsequent amendments to the Medical Practice Act would not be binding on the Board of Osteopathic Examiners. Section 2 of the 1922 initiative clearly incorporated all further amendments to the Medical Practice Act as it did not expect that act to remain invariable. (*Gamble v. Bd. of Osteopathic Examiners, supra*, 21 Cal.2d at 217, 218-219.) "So long as the respective jurisdictions of the Board of Medical Examiners and the Board of Osteopathic Examiners [were] not disturbed, the Legislature remains as free to impose varying requirements on osteopaths and other practitioners after the adoption of the Osteopathic Act as before." (*Id.*, at 219.) Moreover, *Board of Osteopathic Examiners v. Board of Medical Examiners, supra*, specifically upheld the constitutionality of section 4 of the 1962 initiative which gave the Legislature the power to amend or modify the Osteopathic Act. (53 Cal.App.3d at 87; see also 64 Ops.Cal.Atty.Gen., *supra*, at 676, fn. 7.)

The Board of Osteopathic Examiners has adopted certain regulations relating to reciprocity certification which incorporate provisions of the Medical Practice Act, but do so only "as [those provisions] appeared prior to 1962." (See, e.g., 16 Cal. Admin. Code, §§ 1640, 1641.) To the extent that those regulations would freeze the Osteopathic Board's enforcement of the MPA's provisions vis-a-vis osteopaths to that point in time and ignore subsequent changes in them, they are inconsistent with the Board's statutory charge and are therefore invalid. (Gov. Code, 11343.1, 11343.2, *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 205; *Agricultural Labor Relations Bd. v. Superior Court, supra*, 16 Cal.3d at 419-420; *Ferdig v. State Personnel Bd., supra*, 71 Cal.2d at 105; *Conover v. Board of Equalization, supra*, 44 Cal.App.2d at 287.) For four score years osteopaths have waged an unrelenting and ultimately successful jihad to achieve *equality* in treatment with allopaths. While nothing less, certainly nothing more has been secured as a result.

who has been granted the degree of doctor of osteopathy (i.e., a D.O. degree). The section provides for the issuance of a certificate on reciprocity without examination, as follows:

"(a) The Division of Licensing shall issue a physician's and surgeon's certificate on reciprocity if an applicant holds a license to engage in the unlimited practice of medicine issued by another state.

"(b) Subject to the provisions of Section 2142 and 2147, no examination for a reciprocity certificate shall be required.

"(c) *This section shall apply only to persons who have been granted the degree of doctor of medicine* after the completion of a resident course of professional instruction required in this chapter in an approved medical school." (§ 2135; emphasis added.)¹⁰

We have seen how the allopathic nature of the terms "Division of Licensing", "physician's and surgeon's certificate", "practice of medicine", and "approved medical school" would not prevent the section from applying to the Osteopathic Board's issuing a certificate to practice osteopathic medicine to a graduate of an approved osteopathic medical school. The fact remains, however, that subdivision (c) provides that section 2135 is only applicable to a person who has been granted "the degree of doctor of medicine", and that surely is cause for concern.

¹⁰ Its companion, section 2136, provides for the issuance of a reciprocity certificate following examination, thus:

"The *Division of Licensing* shall issue a *physician's and surgeon's* certificate on reciprocity to an applicant providing he or she meets the following requirements:

(a) *The applicant is licensed as a physician and surgeon* in another state whose written examination is recognized by the division to be equivalent in content to that administered in California.

"(b) *The applicant has practiced medicine in such state for at least four years.*

"(c) The division determines that no disciplinary action has been taken against the applicant by any medical licensing authority and that the applicant has not been the subject of adverse judgments or settlements resulting from the practice of medicine which the divisions determines constitutes evidence of a pattern of negligence or incompetence.

"(d) The applicant takes and passes an oral and *comprehensive clinical examination.*

"The provisions of this article which are not inconsistent with or in conflict with this section shall otherwise apply to applicants under this section."

It is abundantly clear from its history, that subdivision (c) was meant to refer only to allopaths, i.e., to persons who had received an M.D. degree, and not to osteopaths who would have received a D.O. degree. The subdivision found its genesis in the 1962 amendment to former section 2310 of the code (Stats. 1963, 1st Ex. Sess., 1962, ch. 46, *supra*), which we recall was part of the "package of enactments" of that year designed to eliminate the further licensure—by reciprocity or otherwise—of new osteopaths in California. Prior to that amendment, section 2310 had not made any distinction between D.O.'s and M.D.'s insofar as their being eligible to receive a certificate on reciprocity without examination was concerned, the section simply providing:

"The board shall issue a reciprocity certificate to an applicant to practice a system or mode of treating the sick or afflicted in this state that he is authorized to practice in any other state if it is a system or mode that is recognized by this chapter or any preceding practice act. Subject to the provisions of Sections 2320 and 2321, no examination for any reciprocity certificate shall be required."

(Stats. 1937, ch. 399 (414), p. 1269 (1377) derived in turn from Stats. 1913, ch. 354, § 13, p. 730; see fns. 5 & 6, *ante*.) In 1962 however the limiting distinction was made when the following was added to section 2310 as a second paragraph:

This section, however, *shall apply only to persons who have been granted the degree of doctor of medicine . . . after the completion of a full course of study as prescribed by this chapter in an approved medical . . . school.* The 'board' referred to in this article is the State Board of Medical Examiners."

(Stats. 1963, 1st Ex. Sess., 1962, ch. 46, p. 672, § 1.)¹¹

Given the fact that that amendment was part of the "package of enactments" designed to prohibit the licensure of new osteopaths in this state, indeed, given the fact that it was only to become operative at all if the Osteopathic Act of 1962 was passed (Stats. 1963, 1st Ex. Sess., ch. 46, § 3, p. 336), there can be no doubt that its purpose was to have the provisions for reciprocity licensure of physicians found in section 2310 *apply only to allopaths*, i.e., to holders of *M.D.* degrees, and that that was who was meant by "persons who have been granted the degree of doctor of medicine." (*D'Amico I, supra*, 6 Cal.App.3d at 724-725; cf. *D'Amico II, supra*, 11 Cal.3d at 8, 12.) But it was exactly that limitation in

¹¹ Section 2310 was subsequently amended in 1971 (Stats. 1971, ch. 753, p. 1492, § 18) and again in 1978 (Stats. 1978, ch. 1161, § 106, p. 3620) and was amended and recodified to its present place, section 2135, in 1980 (Stats. 1980, ch. 1313, p. 4464, § 2).

the application of the section wrought by the 1962 amendment that was found constitutionally wanting in *D'Amico II*, *supra*, 11 Cal.3d 1.

In that case, eight plaintiff graduates of out-of-state colleges of osteopathy and holders of D.O. degrees had sought licensure as physicians and surgeons either in the manner provided for the examining of "new" physicians *or* in the less onerous manner provided by way of reciprocity, but they were precluded from even being considered for either type of licensure by the Osteopathic [Referendum] Act of 1962 and the 1962 amendment to section 2310, respectively. (11 Cal.3d at 6-7.) Their basic claim was that those enactments denied them equal protection of the laws in violation of the state and federal Constitutions. The Supreme Court agreed; finding "beyond peradventure of a doubt" that the classification established by those 1962 enactments, by which osteopathic school graduates (i.e., holders of D.O. degrees) were totally and absolutely barred from licensure as physicians and surgeons regardless of their individual qualifications while qualified allopathic graduates (i.e., holders of M.D. degrees) were not, bore no rational relationship to any conceivable state interest (*id.*, at 22, 23), it held those enactments, "insofar as they [forbade] licensure of graduates of osteopathic colleges . . . regardless of their individual qualifications," to be unconstitutional and "therefore to that extent *void and of no effect*." (*Id.*, at 24.) The court concluded that the eight osteopath holders of D.O. degrees were "entitled to be considered for licensure, either as 'new' physicians and surgeons *or on the basis of reciprocity, according to the provisions of the Osteopathic and Medical Practice Act* which were applicable immediately prior to the 1962 amendments." (*Ibid.*; emphases added.) For the eight, that would have meant consideration *by the Osteopathic Board* for reciprocity licensure *without examination* under the provisions of section 2310 before it was amended in 1962.

Nevertheless, the offensive (second paragraph) amendment to section 2310 is still on the proverbial books, appearing now as subdivision (c) to section 2135 (see fn. 11, *ante*), and it still restricts the reciprocity-without- examination licensure section to persons who hold a "degree of doctor of medicine." In light of *D'Amico II*, there are only two possibilities in its regard: either that reference should now be interpreted to apply to *both* osteopaths (holders of D.O. degrees) and allopaths (holders of M.D. degrees) and be valid,¹² or it should follow its original allopathic bent and be constitutionally infirm and

¹² We are of course constrained to "not espouse an interpretation which invites constitutional difficulties." (*D'Amico I*, *supra*, 6 Cal.App.3d at 726; 64 Ops.Cal.Atty.Gen. 192, 198 (1981).) This can be easily done. Whatever the original meaning of the term "degree of doctor of medicine", the section in which it appears has been subsequently amended and recodified. (See fn. 11, *ante*.) When that was done we can more than just *presume* that the Legislature was aware of the problems *D'Amico II* had found with the application of the clause (cf. *Enyeart v. Board of Supervisors* (1967) 66 Cal.2d 728, 735; *In re Farrant* (1960) 181 Cal.App.2d 231, 238; 66 Ops.Cal.Atty.Gen. 50, 55 (1983)) because in 1974 the Legislature then specifically declared it to be the policy of the state

"void and of no effect" for denying the osteopath but not the allopath, without justifiable reason, the ability to even be considered for reciprocity licensure without examination. In either case, i.e., whether it applies to *both* osteopaths and allopaths, or just to allopaths and is void, we would reach the same result: the subdivision would *not* prevent section 2135 from applying to the Osteopathic Board's reciprocity licensure of out-of-state osteopaths without examination.

Accordingly, we conclude that the reciprocity provisions of article 7 of the Medical Practice Act, including those of section 2135, do apply to the licensure of osteopaths by the Board of Osteopathic Examiners.

that D.O.'s and M.D.'s are to be accorded equal status. (Stats. 1974, ch. 1334, p. 2903, § 1, enacting former § 2142.7.) Thus when it subsequently amended and then recodified section 2310 to 2135 in 1980, it surely would have wished to reflect that equality in the new section's application.