

## THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. GUALBERTO SANTOS, DEFENDANT AND APPELLANT.

*G. R. No. 40100. September 06, 1934*

Ponente: MALCOLM, J.

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### MALCOLM, J.:

The legal question here to be decided is whether the holder of a license to practise medicine who has paid the privilege tax corresponding thereto is entitled to practise dentistry without first having obtained a certificate of registration as dentist and having paid the privilege tax therefor. In the trial court the defendant, a medical practitioner, was convicted of a violation of sections 1453 and 1473 (c) of the Administrative Code, and was sentenced to pay a fine of P25, with subsidiary imprisonment in case of insolvency, and the costs, and was also ordered to pay the tax for the period during which he practised the profession of dentistry illegally.

The defendant is a physician residing in Bulan, Sorsogon, who has there practised his profession and paid the corresponding privilege taxes. In 1931, he announced himself publicly as a medico-dentista. In his office he extracted and treated teeth. Among other things, he placed crowns on the teeth of his patients. For work of this nature he received remuneration.

The Philippine Legislature has provided distinct laws to regulate the practice of medicine and the practice of dentistry. Each law contains specific and varying requirements. Each law is made more mandatory in nature by the use of the words "no person shall practise medicine (dentistry) etc." The comity between the two laws is maintained by the provision in the Medical Law that the inhibition against practising medicine by uncertified persons shall not be construed to affect any "legally registered dentist exclusively engaged in practising dentistry" and by the provision in the Dental Law that the inhibition against the practice of dentistry by uncertified persons shall not be "construed to interfere with the legitimate practice of physicians and surgeons conducted in conformity with the provisions of the Medical Law." (See Administrative Code, Chapter 31, Medical Law, and Chapter 32, Dental Law.) In addition, the Internal Revenue Law (Administrative Code, Chapter 40), specifies different amounts for privilege taxes to be collected from medical -practitioners and dental surgeons.

The two cases which have been particularly addressed to this question reached conflicting results. In *State of Rhode Island vs. Beck* ([1898], 45 L. R. A., 269), the Supreme Court of Rhode Island, held that the "Authority to practise medicine and surgery under Gen. Laws, chap. 165, includes the right to practise dentistry as a branch of surgery, without having complied with the requirements specially provided by Gen. Laws, chap. 155, as amended by Pub. Laws, chap. 470, as a condition for practising dentistry." In the later case of *State of Minnesota vs. Taylor* ([1908], 19 L. R. A., NS., 877), the Supreme Court of Minnesota held that "A person who is licensed to 'practise medicine and surgery' under the statutes of the state cannot, by virtue thereof, 'practise dentistry' without securing a license as a dentist, as required by chap. 117, p. 127, Gen. Laws 1907." In the case last cited, reference was made to the previous Rhode Island decision in the following language: "The reasoning does not carry conviction to our minds, and we cannot regard the case as an authority which should be followed. The recent cases recognize the two professions, as separate and distinct." In this connection, it is worthy of mention that the opinion in the

Minnesota case was delivered by Mr. Justice Elliot who soon after became a member of this court. The Minnesota case is on all fours with the present case, and we think that the rule there announced should be followed in this jurisdiction. (See further 6 Op. Atty. Gen., p. 407, and Reffuss, Dental Jurisprudence, p. 142.)

It of course must be conceded that medicine and dentistry overlap just as other professions and sciences do. Indeed it may further be conceded that the practice of medicine is broader in scope than the practice of dentistry. There may be operations upon the jaws that are within the legitimate profession both of the general surgeon and the dentist. But that is not the point. The point is that the Legislature for reasons of public policy has approved legislation dividing dentistry from medicine. It was in the thought of the legislative body that men who engage in the treatment of the dental organs should receive special preparation, should be specially licensed to practise that particular profession, and should pay a special occupation tax. The training is different. The law relative thereto is different. With this the situation, to hold that the physician can, without complying with the law as to registration and taxation, practise dentistry, would be to take away all the rewards from the man skilled in the science of dentistry, and would be violative of the letter and spirit of the Dental Law. We believe that it would only be just to follow the leading authority, the law, and the intention of the Legislature.

We rule that the holder of a license to practise medicine who has paid the privilege tax corresponding thereto is not entitled to practise dentistry without first having obtained a certificate of registration as dentist and having paid the privilege tax therefor. Accordingly, the judgment appealed from will be affirmed, with the costs of this instance against the appellant.

Street, Villa-Real, Vickers, Imperial, Butte, and Diaz, JJ., concur.

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### **CONCURRING**

**HULL, J.,**

I concur in the majority opinion but desire to make it of record that where a doctor or a dentist enters into the twilight zone where the two professions overlap, he does not become liable to double taxation.

**GODDARD, J.:**

I dissent.

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### **DISSENTING**

**AVANCENA, C. J.**

I dissent.

According to section 770 of the Administrative Code, a person shall be deemed to be practising medicine, who shall "for compensation or reward, either direct or indirect, to himself or other person, treat, operate upon, prescribe, or advise for any human hurt, ailment, or disease, real or supposed, regardless of the nature of the remedy or treatment which is applied or recommended, or who shall represent himself, by means of signs, cards, advertisements or otherwise to be a physician or surgeon or specialist in any branch of medicine or surgery."

This same section, in prohibiting the practice of medicine by persons who have not previously obtained the proper

certificate of registration issued by the Board of Medical Examiners, excludes from the prohibition duly registered dentists, who confine themselves exclusively to the practice of dental surgery.

According to section 794 of the said Code, any person shall be regarded as practising dentistry who shall "for a fee, salary, or other reward, paid to himself or to another person, perform any operation or part of an operation upon the human teeth or jaws, or who shall treat diseases or lesions or correct malpositions of the teeth; \* \* \*"

This section, in prohibiting the practice of dental surgery by those who have not previously obtained a certificate of registration as dentist from the Board of Dental Examiners, provides that such prohibition shall not affect with the legitimate practice of physicians and surgeons in conformity with the provisions of the Medical Law.

It may be noted that the practice of medicine, which has for its object the entire human body and refers to all human hurt, includes the practice of dental surgery which is confined to the treatment of the teeth, forming a part of the human body, as the whole includes every part thereof. Therefore, the contention that dental surgery is excluded from the practice of medicine is untenable, in the absence of a legal provision to the contrary. Such legal provision not only does not exist but there are legal provisions from which it may be inferred that the practice of medicine includes that of dental surgery.

The law, in providing that the prohibition against the practice of dental surgery by those who have not secured the proper certificate of registration as dentist does not affect the practice of physician and surgeon, no doubt refers to the practice of physician and surgeon in dental surgery, inasmuch as it is not necessary for the law to state that the prohibition against the practice of dental surgery does not affect the practice not falling within the province of dental surgery.

The exception in the prohibition against the practice of medicine is another indication that, in the eyes of the law, the practice of medicine includes that of dental surgery because, if such were not the case, it would not be necessary to make such exception. Exception is not made of that which is not included within the rule. But the permission granted a dentist to practise dental surgery is not a prohibition against a physician.

In enacting different laws on medicine and dental surgery, it was not the intention of the Legislature to segregate the latter from the former but merely to permit the limited study and practice of dental surgery by those who do not desire or cannot pursue the more extensive studies required for the practise of general medicine. After all, the knowledge required for the practice of medicine includes that which is necessary for the practice of dental surgery.

The majority opinion will necessarily imply as a consequence that a physician, who may amputate a principal member or perform a very delicate operation on the human body, cannot, however, cure a tooth-ache or draw and replace the teeth with artificial ones made by a goldsmith, which is all that constitute the practice of dental surgery.

In my opinion, inasmuch as the practise of medicine includes that of dental surgery, a physician who has paid the corresponding fees, as such, and at the same time is engaged in the practice of dental surgery, is not obliged to pay the corresponding dentist's fees required of a person who is only engaged in the practice of dental surgery.

**ABAD SANTOS, J.:**

I concur in the dissenting opinion of the Chief Justice.

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