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FORMS OF LIMITED PRACTICE UNDER THE MEDICAL PRACTICE ACT

JAMES T. HENDRICK*

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I. INTRODUCTION

Florida, like all states,¹ regulates the practice of medicine by statute. Florida Statutes chapter 458 (1971), the Medical Practice Act, is a comprehensive regulatory scheme which defines the practice of medicine, sets qualifications for such practice, establishes a state board of medical examiners, and sets penalties for unauthorized practice. Florida Statutes section 458.13(1) (1971) defines the practice of medicine as diagnosis, treatment or prescription "for any human disease, pain, injury, deformity or physical or mental condition." Over fifty years have passed since this definition was written. Vast changes have since taken place in medical science.² Is the statutory definition still sound in light of these changes? Do the constitutional requirements of substantive due process and equal protection require that it be revised to provide for recognition of new forms of practice? Answers to these questions are needed if the development of new forms of practice is not to be delayed in a maze of conflicting legal principles.

Existing case law generally supports the power of the state to require practitioners of unscientific medical cults to obtain the same qualifications required of trained medical doctors. However, this authority should not be extended so as to validate statutory requirements that practitioners of *legitimate* healing arts master skills unrelated to their form of treatment. A distinction must be drawn between limited practice and quackery. To the extent that they do not make the distinction, present medical practice acts are subject to constitutional attack on two grounds. First, scientific forms of limited medical practice are entitled to legislative recognition. Statutes which require knowledge of

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1. A compilation of state codes regulating medical practice may be found in Forgotson, Roemer & Newman, *Licensure of Physicians*, 1967 WASH. U.L.Q. 249, 250-51 [hereinafter cited as *Licensure of Physicians*].

2. *Id.* at 249.

unrelated skills are unreasonable. Second, statutory schemes which license unscientific practitioners (*e.g.* chiropractors and naturopaths), but deny authorization to qualified limited practitioners, may be guilty of arbitrary and irrational classification. This article examines the judicial development of these two arguments.

Medical licensure laws were first enacted in the United States during the late 19th and early 20th centuries.³ Their announced purpose was to protect the public against quacks and incompetents, and to foster the growth of scientific practices.⁴ To that end, the state legislatures typically defined the practice of medicine in sweeping terms, so as to include within the regulatory provisions practitioners of every degree of form and competence. This legislative purpose was given effect by the courts, which have held every form of diagnosis or treatment to be the practice of medicine. The following have been found to be within the statutory definition: naturopaths,⁵ chiropractors,⁶ osteopaths,⁷ physical therapists,⁸ hypno-therapists,⁹ hearing and speech therapists,¹⁰ and manicurists and pedicurists who perform more than cosmetic functions.¹¹ The definition has also been found to include the proprietor of a health-food store who advised customers what to eat when they came to him with complaints of minor ailments.¹² Advising someone to exercise, stay out of drafts, and see a doctor does not constitute the practice of medicine,¹³ nor does non-therapeutic massage.¹⁴ Giving blood pressure tests and announcing the results, without giving advice or prescribing treatment, is not included.¹⁵ The dividing line is "diagnosis" or "treatment." These terms will be broadly interpreted by the courts: "The practice of medicine is defined broadly enough to apply to witch doctors, voodoo queens, or the pharmacist who suggests aspirin for a headache."¹⁶ Where the statute fails to define "the practice of medicine," the courts have supplied a broad definition, and have rejected the contention that the failure to provide a statutory definition rendered the act void for vagueness.¹⁷

3. *Id.*

4. *Hawker v. New York*, 170 U.S. 189, 195 (1898).

5. *Hitchcock v. Collenberg*, 140 F. Supp. 894 (D. Md. 1956), *aff'd*, 353 U.S. 919 (1957); *Aitchison v. State*, 204 Md. 538, 105 A.2d 495, *cert. denied*, 348 U.S. 880 (1954).

6. *Commonwealth v. Zimmerman*, 221 Mass. 184, 108 N.E. 893 (1915).

7. *Collins v. Texas*, 223 U.S. 288 (1912).

8. 1955-1956 FLA. ATT'Y GEN. BIENNIAL REP. 463.

9. *Id.* at 467.

10. 1963-1964 FLA. ATT'Y GEN. BIENNIAL REP. 415.

11. 1965-1966 FLA. ATT'Y GEN. BIENNIAL REP. 120.

12. *Pinkus v. MacMahon*, 129 N.J.L. 367, 29 A.2d 885 (Sup. Ct. 1943).

13. *Louisiana State Bd. of Medical Examiners v. Craft*, 93 So.2d 298 (La. App. 1957).

14. *Louisiana State Bd. of Medical Examiners v. Martindale*, 83 So.2d 544 (La. App. 1955).

15. *Lambert v. State*, 77 So.2d 869 (Fla. 1955).

16. *England v. Louisiana State Bd. of Medical Examiners*, 259 F.2d 626, 633 (5th Cir. 1958) (dissenting opinion).

17. *State v. Errington*, 355 S.W.2d 952 (Mo. 1962); *cf. State v. Ramos*, 232 So.2d 381 (Fla. 1970), holding that the term "profess to be a podiatrist" is not vague.

In order to provide for licensure of dentists, nurses, and other health personnel, all the states¹⁸ have provided statutory exceptions to the general definition of the practice of medicine. Florida exempts duly licensed podiatrists, optometrists, osteopaths, psychologists, nurses, pharmacists, dentists and midwives, to the extent that they limit their practices to the powers granted by their respective statutes.¹⁹ Also exempted are religious healers,²⁰ family²¹ and emergency care,²² and the fitting of eyeglasses and certain medical appliances.²³ Chiropractors and naturopaths have persuaded the legislature to accord them a limited recognition.²⁴ However, there is no provision in this patchwork of exemptions for the recognition of new limited forms of practice as they are developed. This creates a dilemma: In the absence of a specific exemption, no new form of limited practice may develop; but, until it develops, its practitioners will not have sufficient lobbying strength and public acceptance to obtain a legislative exemption. Therefore, limited practitioners will develop, if at all, in violation of the medical practice acts.

II. NEW AREAS OF "MEDICAL PRACTICE"

The broad statutory definitions of the practice of medicine may encompass such diverse disciplines as yoga, Transcendental Meditation, acupuncture, and human nutrition, to the extent that they involve the diagnosis or treatment of a "physical or mental condition."²⁵ Although yoga²⁶ and Transcendental Meditation²⁷ rest on medically-sound principles, they are popularly associated with the Eastern mysticism which produced them.²⁸ They are beyond the scope of this comment because their mythology may place them within the purview of the religious healing exception²⁹ and because they present unique licensing problems.³⁰

18. A compilation of the statutory exceptions may be found in *Licensure of Physicians*, *supra* note 1, at 251-52.

19. FLA. STAT. § 458.13(2)(a) (1971).

20. FLA. STAT. § 458.13(2)(f) (1971).

21. FLA. STAT. § 458.13(2)(e) (1971).

22. FLA. STAT. § 458.13(2)(d) (1971).

23. FLA. STAT. § 458.13(2)(g) (1971).

24. FLA. STAT. § 458.13(2)(a) (1971).

25. FLA. STAT. § 458.13(1) (1971).

26. Yoga is used as therapy for a broad range of medical problems, from psychiatric disorders to back troubles. Davidson, *The Rush for Instant Salvation*, 243 HARPER'S 40 (July 1971) [hereinafter cited as Davidson].

27. Scientific experiments strongly indicate that Transcendental Meditation induces physiological changes. It may be an effective treatment for alcoholism and drug addiction. TIME, Oct. 25, 1971, at 51. See also Williams, *Transcendental Meditation: Can it Fight Drug Abuse?* 71 SCI. DIGEST 74 (Feb. 1972) [hereinafter cited as Williams].

28. This is a misconception. Transcendental Meditation and yoga are no longer the exclusive province of mystics and religious cultists. Williams, *supra* note 27. Stripped of their traditional but non-essential mythology, both techniques may become effective forms of medical therapy in the hands of trained lay practitioners.

29. FLA. STAT. § 458.13(2)(f) (1971).

30. "Anyone may call himself a swami, a guru, or a reverend, place an ad in the local underground and wait for the phone to ring." Davidson, *supra* note 26 at 40.

Acupuncture is an ancient Chinese method of drugless anesthesia which has only recently attracted American interest. Chinese acupuncturists insert needles in body nerve centers, producing a safe and highly effective anesthesia.³¹ China does not require its practitioners to be graduates of medical schools.³² Indeed, one of the major advantages of the method is that it does not require training in sophisticated medical technology.³³ Acupuncture is expected to become popular in this country, and the qualifications of its new practitioners will largely depend on statutory regulation.³⁴

Nutrition is a science which has assumed major medical importance since the original medical practice laws were enacted.³⁵ Florida law makes no provision for prescription of diets by nutritionists, despite the fact that, "many diseases and conditions of unknown etiology have now been revealed to be essentially nutritional disorders which in most cases can be dramatically corrected by nutritional therapy."³⁶ Additionally, there are many new forms of paramedical technology which are threatened by outmoded definitions of the practice of medicine.³⁷

These examples of developing medical disciplines illustrate the range of potential problems under present licensing provisions:

In spite of these developments, laws regulating the practice of medicine primarily recognize only the physician with twelve to fourteen years of education and training after high school and the professional nurse who may have had as little as two years of formal education after high school.³⁸

The following sections examine the constitutional validity of the medical practice acts as applied to new forms of limited practice.

III. THE REGULATORY POWER

The states' power to regulate the medical profession has been consistently upheld by the United States Supreme Court since 1889. In *Dent v. West Virginia*,³⁹ defendant had been convicted for unlawfully practicing medicine without a license. He attacked his conviction on the ground that the license requirement deprived him of the right to

31. Churchill, *Chinese Focus on Internal Reforms, Deny Aspirations for Expansionism*, The Miami Herald, May 8, 1972, at 32-A, col. 1 [hereinafter cited as Churchill].

32. Simpson, *Acupuncture*, 55 SAT. REV. 47 (Feb. 19, 1972) [hereinafter cited as Simpson].

33. Churchill, *supra* note 31.

34. Simpson, *supra* note 32.

35. Pothier, Fillios & Stare, *Nutrition*, in 9 CYCLOPEDIA OF MEDICINE 760A (1970).

36. *Id.*

37. Forgotson & Cook, *Innovations and Experiments in Uses of Health Manpower—The Effect of Licensure Laws*, in MEDICAL PROGRESS AND THE LAW 171 (1969).

38. *Id.* at 174.

39. 129 U.S. 114 (1889).

practice his profession. The court found that the defendant had an "undoubted" right to follow any lawful profession, free of arbitrary governmental regulation.⁴⁰ However, it also recognized the state's power to provide for the general welfare through the prescription of regulations designed to secure the public from its own "ignorance and incapacity" in medical matters.⁴¹ Because few laymen possessed sufficient knowledge of "those subtle and mysterious influences upon which health and life depend," few were capable of judging a physician's qualifications.⁴² "Reliance must be placed upon the assurance given by his license."⁴³ Therefore:

The power of the State to provide for the general welfare of its people authorizes it to prescribe all such regulations as, in its judgment, will secure or tend to secure them against the consequences of ignorance and incapacity as well as of deception and fraud.⁴⁴

Dent's conviction was consequently upheld as a valid exercise of the state's power to provide for the general welfare.

In 1898, the Court reaffirmed the legislature's power to prescribe qualifications necessary "to prevent the imposition of quacks, adventurers, and charlatans upon the ignorant and credulous . . .," and to "secure them the services of reputable, skilled and learned men."⁴⁵ Thirty years later, the Court upheld a Minnesota statute which granted dental licenses only to graduates of accredited dental colleges.⁴⁶ This condition was validated on the basis that "police statutes may only be declared unconstitutional where they are arbitrary or unreasonable"⁴⁷

During its October, 1934, term, the same court which emasculated New Deal codes of competition in *A.L.A. Schechter Poultry Corp. v. United States*,⁴⁸ upheld an Oregon act which prohibited dental advertising in *Semler v. Oregon State Board of Dental Examiners*.⁴⁹ Justice Hughes, writing for a unanimous bench, took pains to distinguish dentists and physicians from poultry sellers:

The legislature was not dealing with traders in commodities, but with the vital interest of public health, and with a profession treating bodily ills and demanding different standards

40. *Id.* at 121.

41. *Id.* at 122.

42. *Id.*

43. *Id.* at 122-23.

44. *Id.* at 122.

45. *Hawker v. New York*, 170 U.S. 189, 195 (1898).

46. *Graves v. Minnesota*, 272 U.S. 425 (1926).

47. *Id.* at 428.

48. 295 U.S. 495 (1935).

49. 294 U.S. 608 (1935) [hereinafter cited as *Semler*].

of conduct from those which are traditional in the competition of the market place.⁵⁰

Since *Semler*, the existence of broad power to regulate the practice of medicine has not been seriously questioned. However, the question of how this power may be exercised has been frequently litigated.

Challenges to the medical practice acts have typically adopted two theories: (1) according a preference to one school of practitioners over another constitutes a denial of equal protection; (2) the licensing requirements as applied to purported "limited practitioners" are unreasonable.

IV. EQUAL PROTECTION

The equal protection argument was first considered by the Supreme Court in *Watson v. Maryland*.⁵¹ *Watson* was convicted of practicing medicine without a license. He alleged that the statute denied him the equal protection of the laws, *inter alia*, because it exempted from its provisions chiropodists, midwives and masseurs, who confined themselves to manual manipulation. The Court applied a now-familiar test: if the classification "has a reasonable basis and is not merely arbitrary selection without real difference" between those included and those excluded, it will be sustained.⁵² Because the classification in question was found to be "not without reason," it was upheld.

Unreasonable classification was alleged, without success, in *Semler*. Justice Hughes cited *Watson* as authority for the proposition that a statute may properly limit one profession (here dentistry) without burdening all others to the same extent.

The state was not bound to deal alike with all these classes, or to strike at all evils at the same time or in the same way. It could deal with the different professions according to the needs of the public in relation to each.⁵³

Watson's distinction between physical manipulators and doctors, and *Semler's* distinction between physicians and dentists, are easily accepted. A statute which exempts back and foot manipulators from the extensive educational requirements demanded of physicians (*Watson*) rests on real and obvious differences between the two professions. The practice of dentistry is easily distinguished by any layman from the practice of medicine (*Semler*). However, the distinction is not so clear when the legislature picks and chooses among practitioners of various medical cults, according recognition to some while refusing to license others.

50. *Id.* at 612.

51. 218 U.S. 173 (1910) [hereinafter cited as *Watson*].

52. *Id.* at 178.

53. *Semler v. Oregon State Bd. of Dental Examiners*, 294 U.S. 608, 610 (1935).

An early Supreme Court decision, *Crane v. Johnson*,⁵⁴ upheld California's distinction between drugless practitioners and prayer-healers. The state statute required drugless practitioners to complete a course of study and pass an examination, but specifically exempted "treatment by prayer."⁵⁵ Crane, a drugless practitioner who allegedly effected cures through the use of faith, hope, and mental suggestion, claimed that the legislature had no rational basis for distinguishing between his practice and healing by prayer alone. Substantial similarities were obvious. However, Crane claimed *diagnostic* skills, "and special knowledge is therefore required."⁵⁶ The legislature's determination that diagnosis required special training but that prayer did not was sustained as a reasonable basis for exempting prayer-only healers.⁵⁷

Naturopaths, osteopaths and chiropractors are responsible for most of the case law dealing with the equal protection argument. Naturopathy is a drugless system of therapy using physical and natural remedies such as air, light, water, heat, massage, and plant substances.⁵⁸ Osteopathy and chiropractic share similar origins, although osteopaths subsequently abandoned their original tenets⁵⁹ and, unlike chiropractors,⁶⁰ are now generally accepted as scientific practitioners by the medical profession.⁶¹ In its original form, osteopathy was a drugless method of therapy based on the theory that disease was caused by "deranged mechanisms" of the bones and nerves.⁶² Osteopaths "remedied" such conditions by manipulation of the bones and muscles.⁶³ Chiropractic doctrine holds that diseases are caused by a "subluxation" (misalignment) of the spinal vertebrae, which can be cured by manipulation of the spine.⁶⁴

Equal protection arguments have been raised by naturopaths complaining of statutory discrimination in favor of osteopaths and chiropractors, and by chiropractors complaining of favoritism toward osteo-

54. 242 U.S. 339 (1917) [hereinafter cited as *Crane*].

55. *Id.* at 342.

56. *Id.* at 344.

57. *Id.*

58. *Perry v. Larson*, 25 F. Supp. 728, 729 (S.D. Fla. 1938). FLA. STAT. § 462.01 (1971) defines naturopathy in greater detail. Naturopathy is vanishing by attrition. *Licensure of Physicians*, *supra* note 1, at 298. In Florida, only those naturopaths who were practicing in 1959 may renew their licenses. FLA. STAT. § 462.022 (1971).

59. *Licensure of Physicians*, *supra* note 1, at 290-91.

60. *Id.* at 299; *England v. Louisiana State Bd. of Medical Examiners*, 126 So.2d 51, 56 (La. App. 1960) (testimony of physicians that it is "silly" to allude to chiropractic as a science).

61. *Licensure of Physicians*, *supra* note 1, at 291.

62. *Id.* at 290-91. FLA. STAT. §§ 459.01, 459.08 (1971) contain a modern definition of osteopathy.

63. *Parks v. State*, 159 Ind. 211, 229, 64 N.E. 862, 869 (1902).

64. *England v. Louisiana State Bd. of Medical Examiners*, 246 F. Supp. 993, 995 (E.D. La. 1965) (three-judge court) [hereinafter cited as *England*]. FLA. STAT. § 460.11 (1971) defines chiropractic in greater detail.

paths. Typical are *Aitchison v. State*⁶⁵ and *Louisiana State Board of Medical Examiners v. Fife*.⁶⁶ In *Aitchison*, a naturopath was convicted of practicing medicine without a license. The statute excluded, among others, osteopaths and chiropractors, who were separately licensed. The Maryland court rejected the defendant's contention that denial of like exemption to naturopaths was a violation of equal protection. *Crane* was cited as authority for the proposition that medical regulations "need not be uniform with respect to all methods and systems of practice."⁶⁷ *Fife* involved a challenge to Louisiana's exemption of osteopaths from its medical practice act. Defendants alleged that the act denied them the equal protection of the laws by requiring them to take a full medical and surgical course, while allowing osteopaths to practice without such knowledge. The court held this distinction to be within the "reasonable discretion" of the legislature.⁶⁸ Neither the *Aitchison* nor *Fife* court alluded to the existence of distinguishing characteristics between the privileged and non-privileged cults. Unlike the physician-chiropractist distinction in *Watson* and the physician-dentist distinction in *Semler*, the chief differences between the cults may well have been in their names and the strength of their lobbies.⁶⁹ The refusal to look for essential differences is puzzling, in light of *Crane's* careful attention to that issue.

Aitchison and *Fife* provided the basis of *Hitchcock v. Collenberg*,⁷⁰ which rejected a naturopath's equal protection attack on the Maryland medical practice act. Like the statutes in the two earlier cases, Maryland's act provided special exemptions for some cults, including osteopathy and chiropractic, while requiring practitioners of other cults to qualify as medical doctors. The court justified this inequality in a curious fashion. It reasoned that under the statutory exemption, the treatment which osteopaths and chiropractors could give was limited, while naturopaths "undertake to treat any and all diseases in a wide variety of fashions."⁷¹ However, chiropractic also claims to be a "complete and independent healing art."⁷² Chiropractic is a limited treatment in Maryland only because the statute makes it so. When two cults each offer a

65. 204 Md. 538, 105 A.2d 495 (1954), *cert. denied*, 348 U.S. 880 (1954) [hereinafter cited as *Aitchison*].

66. 162 La. 681, 111 So. 58 (1926) [hereinafter cited as *Fife*]. See also *Commonwealth v. Zimmerman*, 221 Mass. 184, 108 N.E. 893 (1915) (chiropractor challenged exemption of osteopaths), and cases collected in Annot., 54 A.L.R. 600 (1928); Annot., 42 A.L.R. 1342 (1926); Annot., 37 A.L.R. 680 (1925); Annot., 16 A.L.R. 709 (1922).

67. 204 Md. at 548-49, 105 A.2d at 500.

68. 162 La. at 690, 111 So. at 61.

69. The cults used similar practices in their early stages of development. See *Licensure of Physicians*, *supra* note 1, at 290-91.

70. 140 F. Supp. 894 (D. Md. at 156), *aff'd*, 353 U.S. 919 (1957).

71. 140 F. Supp. at 902.

72. *England v. Louisiana State Bd. of Medical Examiners*, 246 F. Supp. 993 (E.D. La. 1965).

"complete" cure, why is one entitled to limited statutory recognition while the other is denied it? The answer can only be found in an essential difference between the cults. Unfortunately, the *Hitchcock* court failed to examine the record for such differences.

The most recent Supreme Court decision involving an equal protection challenge to a medical practice act is *Williamson v. Lee Optical Co.*⁷³ An Oklahoma law prohibited advertisement of eye glasses, but exempted sellers of ready-to-wear glasses. The effect of the law was to discriminate against opticians and in favor of sellers of cheap, ready-made glasses. Justice Douglas mentioned two situations in which legislative discrimination within the same field will be upheld: (1) where the evils sought to be remedied are different; and (2) where the legislature, proceeding "one step at a time," tackles the phase of a problem which it considers most acute.⁷⁴ The equal protection clause prohibits only "invidious discrimination."⁷⁵ Applying these tests to the Oklahoma statute and the facts before him, Justice Douglas was able to hypothesize that, "the ready-to-wear branch of this business *may not* loom large in Oklahoma or *may* present problems of regulation distinct from the other branch."⁷⁶ In light of *Williamson*, the present federal test affords the legislature a wide latitude in establishing classifications within a medical practice act. The Court will search the record for *possible* differences of degree between the problems of the privileged and non-privileged classes. However, nothing in *Williamson* provides that differences may be assumed without comparing the classes. *Aitchison*, *Fife* and *Hitchcock* are still subject to criticism for their failure to look for essential differences. Moreover, *Williamson* does not suggest that *any* difference is enough to support preferential classification.

Florida continues to adhere to the rule that occupational regulations "must operate with substantial fairness upon all persons similarly situated."⁷⁷ In a post-*Williamson* case,⁷⁸ which invalidated legislative classifications of naturopaths, the Supreme Court of Florida applied a standard which differs substantially from the federal test.

It is well settled that a legislative classification should "have some just relation to, or reasonable basis in, essential differences of conditions and circumstances with reference to the subject regulated"⁷⁹

The difference between the federal and Florida tests is one of empha-

73. 348 U.S. 483 (1955) [hereinafter cited as *Williamson*].

74. *Id.* at 489.

75. *Id.*

76. *Id.* (Emphasis added).

77. State *ex rel. Fulton v. Ives*, 123 Fla. 401, 413, 167 So. 394, 399 (1936) [hereinafter cited as *Fulton*].

78. *Eslin v. Collins*, 108 So.2d 889 (Fla. 1959).

79. *Id.* at 891, *citing* *Seaboard Airline Ry. v. Abe Simon & Co.*, 56 Fla. 545, 552, 47 So. 1001, 1003 (1908).

sis. However, it is clear that an equal protection challenge to occupational classifications will be more favorably received in the Florida courts⁸⁰ than in the federal system.

V. SUBSTANTIVE DUE PROCESS

A. *Development of the Reasonableness Test*

The second argument typically raised by limited practitioners is that the medical practice licensing requirements are unreasonable as applied to them. The test of "reasonableness" was first stated in *Dent v. West Virginia*.⁸¹ The Court established a test which has been repeated in nearly every major case:

The nature and extent of the qualifications required must depend primarily upon the judgment of the state as to their necessity. If they are appropriate to the calling or profession, and attainable by reasonable study or application, no objection to their validity can be raised because of their stringency or difficulty. It is only when they have no relation to such calling or profession, or are unattainable by such reasonable study and application, that they can operate to deprive one of his right to pursue a lawful vocation.⁸²

One of the first courts to apply the test to limited practitioners held in favor of the limited practitioner and against the North Carolina medical practice act.⁸³ *Biggs* held himself out as a "nonmedical physician." His treatment was limited to massage and advising patients as to diet. The act defined the practice of medicine as the management of "any case of disease, physical or mental, real or imaginary, with or without drugs . . . or by any method whatsoever."⁸⁴ It required all practitioners to obtain a license and provided that license applicants must have successfully completed a comprehensive examination.⁸⁵ The court reviewed the broad scope of the statutory definition and asked rhetorically, "Is it requisite that the man who treats a diseased ear shall really be competent in obstetrics, or that it is a penalty . . . to sell a little herb tea for the stomach ache without being scientifically versed in pathology and physiology? The act is too sweeping."⁸⁶ Although it recognized the legislative power to require competent physicians, the

80. The reception was very favorable in *Florida Accountants Ass'n v. Dandelake*, 98 So.2d 323 (Fla. 1957) [hereinafter cited as *Dandelake*], which struck, as a denial of equal protection, a distinction between certified and non-certified accountants.

81. 129 U.S. 114 (1889).

82. *Id.* at 122.

83. *State v. Biggs*, 133 N.C. 729, 46 S.E. 401 (1903) [hereinafter cited as *Biggs*].

84. *Id.* at 733, 46 S.E. at 402.

85. The subjects examined were anatomy, physiology, surgery, pathology, medical hygiene, chemistry, pharmacy, materia medica, therapeutics, obstetrics, and the practice of medicine.

86. 133 N.C. at 735, 46 S.E. at 403.

court noted that, "there are methods of treatment which do not require much skill and learning if any."⁸⁷ Therefore, the exhaustive examination required of Biggs by the state "is not warranted by any legitimate exercise of the police power."⁸⁸ The statute was further condemned as an attempt to confer a monopoly on medical doctors.⁸⁹

Although *Biggs* endorsed the practice of what today would be considered quackery, its result was not unreasonable in 1903. University-educated physicians were rare, and the public relied on corn doctors, herb doctors and drugless healers like Andrew Biggs to attend to their less serious ailments. A law which banished these folk healers when no adequate substitute existed could well be considered arbitrary and unreasonable.

In 1912 the Supreme Court, in *Collins v. Texas*,⁹⁰ upheld the Texas medical practice act against the challenge of an unlicensed osteopath who attacked the required examination as unreasonable. Like the North Carolina statute in *Biggs*, the Texas law conditioned licensure on knowledge of subjects as diverse as bacteriology and obstetrics. Justice Holmes, writing for the Court, laid particular stress on the defendant's claim that he practiced a complete healing art:

He like others must begin by a diagnosis. It is no answer to say that in many instances the diagnosis is easy—that a man knows it when he has a cold or a toothache. For a general practice science is needed. An osteopath undertakes to be something more than a nurse or a masseur, and the difference rests precisely in a claim to greater science, which the State requires him to prove.⁹¹

Collins must be held to its facts. Had Collins limited his practice and not laid claim to "greater science," a different result would have been justified. Holmes wrote that "[T]he same considerations that justify including him justify excluding the lower grades from the law."⁹² This dictum affirmed the *Biggs* distinction between general and limited practitioners.

Shortly after *Collins* was handed down, the highest court of Massachusetts decided *Commonwealth v. Zimmerman*,⁹³ in which the court held that the legislative power to require skilled treatment, "may be effectuated by requiring even of those who propose to confine their practice to a narrow specialty a much broader knowledge of the subject. . . ."⁹⁴ *Zimmerman* implicitly rejected much of the *Biggs* teach-

87. *Id.* at 737, 46 S.E. at 404.

88. *Id.*

89. *Id.* at 736, 46 S.E. at 403.

90. 223 U.S. 288 (1912).

91. *Id.* at 296-97.

92. *Id.* at 297.

93. 221 Mass. 184, 108 N.E. 893 (1915).

94. *Id.* at 189, 108 N.E. at 895.

ing, and expanded *Collins* by permitting the state to require of *all* its practitioners, general and limited, a basic understanding of all facets of the healing art. This requirement was justified as applied to Zimmerman, because his chiropractic manipulation "was of a most important part of the body and related to a nerve center."⁹⁵ Unfortunately, the quoted language applies equally to *all* practitioners, including those whose effectiveness does not require the full training expected of a medical doctor, and whose practice does not affect critical nerve centers.

The *Zimmerman* rule has been widely adopted. The Louisiana court in *Fife* has held that there is no legislative duty to provide separate qualifications for each school of limited practice:

Were it otherwise, . . . [e]very group of men who might get together and evolve some system, designed to restore health, would be entitled to recognition, and all that could be required of them would be evidence of good character and a knowledge of such subjects as their particular school seemed to require, although the Legislature might deem with reason a knowledge of such subjects wholly insufficient to entitle any one to treat the sick.⁹⁶

This reasoning does not support the broad holding of *Fife*. The legislature might well find the theories of a particular cult "wholly insufficient" to treat the sick. However, if there are scientifically valid methods which properly limit their treatment to one aspect of human health (e.g., nutrition), may the state deny them recognition merely because their therapy is incomplete?

The extent to which the "reasonableness" rule has been stretched is illustrated in *Pinkus v. MacMahon*.⁹⁷ Defendant, who held college degrees in the areas of food chemistry and science, biology and physiology, operated a health-food store. Some of his customers came to him with complaints of various aches and itches, and he advised them what to eat. There was no allegation that he held himself out as a doctor. However, the court sustained his conviction for unauthorized practice because he "diagnosed" ailments. It found "nothing unreasonable in prohibiting this practice by other than licensed physicians."⁹⁸ *Pinkus* is *Fife* drawn to its logical extremity. The court, in effect, held that the state may reasonably require the knowledge of surgery, obstetrics and all the other courses required of M.D.'s and graduation from an accredited medical school, as a condition to suggesting diets.

A more reasonable approach was taken by the Fifth Circuit in

95. *Id.* at 188, 108 N.E. at 894.

96. Louisiana State Bd. of Medical Examiners v. Fife, 162 La. 681, 686, 111 So. 58, 60-61 (1926). This reasoning was adopted in the leading cases of Hitchcock v. Collenberg, 140 F. Supp. 894, 899 (D. Md. 1956), and State v. Errington, 355 S.W.2d 952, 957 (Mo. 1962).

97. 129 N.J.L. 367, 29 A.2d 885 (Sup. Ct. 1943).

98. *Id.* at 369, 29 A.2d at 887.

the protracted *England* litigation.⁹⁹ Although it was reviewing the action of a district court sitting in Louisiana, the court refused to be bound by *Fife*: "In the thirty odd years since that decision was rendered, we judicially know that the healing art in general has made further enormous progress away from the ancient days when barbers did the blood letting."¹⁰⁰ Therefore, the plaintiff-chiropractors were entitled to present evidence to establish the unreasonableness of Louisiana's requirement that they hold a diploma from an AMA-accredited college, and master the art of surgery and materia medica. The argument that the state may require all limited practitioners to meet the M.D. standard was rejected:

It is certainly true that the State is not bound to recognize every peculiar theory or school of medicine. Without doubt it is reasonable for the state to outlaw witch doctors, voodoo queens, bee stingers, and various other cults which no reasonably intelligent man would choose for the treatment of his ills, but it would certainly be arbitrary to exclude some, if not all, of the following classes which Louisiana does admit to practice: dentists, osteopaths, nurses, chiropodists, optometrists, pharmacists, and midwives.¹⁰¹

The court then phrased its own test for gauging the validity of licensing requirements:

[T]he State cannot deny to any individual the right to exercise a reasonable choice in the method of treatment of his ills, nor the correlative right of practitioners to engage in the practice of a useful profession.¹⁰²

On rehearing, the rule was further clarified to mean that "the State cannot outlaw an allegedly useful and lawful profession without a 'reasonable' or 'rational' basis for so doing."¹⁰³ This is tacit recognition that requiring full M.D. training for a limited practice effectively prevents the exercise of that practice.¹⁰⁴

Although it provided the chiropractors an opportunity to prove the unreasonableness of Louisiana's licensing qualifications, the court did

99. *England v. Louisiana State Bd. of Medical Examiners*, 259 F.2d 626 (5th Cir. 1958), *reh. denied*, 263 F.2d 661 (5th Cir.), *cert. denied*, 359 U.S. 1012 (1959) [hereinafter cited as *England*].

100. 259 F.2d at 627.

101. *Id.*

102. *Id.*

103. *England v. Louisiana State Bd. of Medical Examiners*, 263 F.2d 661, 674 (5th Cir. 1959).

104. In agreement is *State ex rel. State Bd. of Medicine v. Smith*, 81 Idaho 103, 110, 337 P.2d 938, 942 (1959). Earlier decisions maintained the fiction that the imposition of such requirements did not prevent limited practice. *See, e.g., Hitchcock v. Collenberg*, 140 F. Supp. 894, 899 (D. Md. 1956): "The Maryland law does not prohibit the practice of naturopathy. Any person who has met the qualifications necessary to secure a license to practice medicine . . . may apply the principles of naturopathy in his practice."

not abandon the strict burden of proof required by the Supreme Court in challenges to "reasonableness."

Indeed, the burden upon the plaintiffs is great, if not insurmountable. They must show that the Act as administered "*has no rational relation*" to the regulation of chiropractic and "therefore is beyond constitutional bounds." *Williamson v. Lee Optical Company*¹⁰⁵

The Louisiana chiropractors were subsequently unable to convince the state and federal courts that their form of practice was constitutionally entitled to separate recognition.¹⁰⁶ However, *England* re-established judicial willingness, dormant since *Biggs* and *Collins*, to compare the qualifications required with the nature of the particular practice.¹⁰⁷

The following sections examine specific arguments which may be made in challenges to the reasonableness of licensure requirements as applied to limited practice.

B. *The Right To Practice a Profession*

Dent v. West Virginia recognized the "undoubted" right of every citizen to follow "any lawful calling, business, or profession he may choose," subject only to reasonable regulation through the exercise of the state's police power.¹⁰⁸ Most subsequent cases have continued to recognize this right,¹⁰⁹ although some courts refer to it as a "conditional right" because of the inherent right of the state to regulate.¹¹⁰ Some courts have further conditioned the right to practice a profession on a showing that it is "useful."¹¹¹ Apparently a profession is "useful" when there is near-unanimity among experts in related professions that it is cap-

105. *England v. Louisiana State Bd. of Medical Examiners*, 263 F.2d 661, 674 (5th Cir. 1959) (emphasis added).

106. *England v. Louisiana State Bd. of Medical Examiners*, 246 F. Supp. 993 (E.D. La. 1965); *England v. Louisiana State Bd. of Medical Examiners*, 126 So.2d 51 (La. App. 1960). Subsequent cases have agreed that chiropractors are not entitled to recognition. In 1969, a federal court considered the issue so well settled that it refused to convene a three-judge court to pass on the constitutional issue. *Heaney v. Allen*, 299 F. Supp. 1300 (E.D.N.Y. 1969).

107. This willingness was also expressed in *State ex rel. State Bd. of Medicine v. Smith*, 81 Idaho 103, 337 P.2d 938 (1959), in which a naturopath successfully challenged Idaho's medical practice act as unreasonable.

108. 129 U.S. 114, 121 (1889). *Accord*, *Semler v. Oregon State Bd. of Medical Examiners*, 294 U.S. 608, 610 (1935). This right is secured by the Fourteenth Amendment to the United States Constitution. *State ex rel. State Bd. of Medicine v. Smith*, 81 Idaho 103, 109, 337 P.2d 938, 941 (1959) ("liberty"); *Aitchison v. State*, 204 Md. 538, 544, 105 A.2d 495, 498 (1954) ("due process").

109. *State ex rel. Fulton v. Ives*, 123 Fla. 401, 416, 167 So. 394, 400 (1936); *State v. Errington*, 355 S.W.2d 952, 957 (Mo. 1962).

110. *E.g.*, *Louisiana State Bd. of Medical Examiners v. Fife*, 162 La. 681, 685, 111 So. 58, 60 (1926); *Aitchison v. State*, 204 Md. 538, 544, 105 A.2d 495, 498 (1954).

111. *England v. Louisiana State Bd. of Medical Examiners*, 263 F.2d 661, 674 (5th Cir. 1959) ("useful and lawful"); *England v. Louisiana State Bd. of Medical Examiners*, 259 F.2d 661, 674 (5th Cir. 1958) ("useful"); *England v. Louisiana State Bd. of Medical Examiners*, 126 So.2d 51, 55 (La. App. 1960) ("usefulness").

able of achieving beneficial results.¹¹² However, such a showing is largely irrelevant, because once he has proven his "usefulness," the limited practitioner must meet the greater burden of proving that the denial of recognition is "arbitrary and unreasonable."¹¹³ The "usefulness" test, therefore, adds nothing but confusion to the basic issue of reasonableness.

The right to practice does not apply to an "inherently injurious" activity.¹¹⁴ It has been held that a limited practitioner who uses nothing but natural substances and forces is not engaged in an inherently injurious profession.¹¹⁵

C. Monopoly

Once the right to practice has been established, the next question is whether that right has been arbitrarily deprived by the state. One of the first attacks leveled against the early medical practice acts was that they were an effort by M.D.'s to create a medical monopoly.¹¹⁶ Modern scholars do not agree as to whether the licensing statutes were primarily designed as an anti-competitive measure to limit the number of new health practitioners, or as a legitimate means of protecting the public from quacks.¹¹⁷ If the act were nothing more than a creature of medical lobbyists, it would be arbitrary, and therefore unconstitutional.¹¹⁸ However, if there are reasonable grounds for sustaining the act, the legislature's possible motives for passing it are irrelevant.¹¹⁹ Therefore, the "monopoly" argument, by itself, is ineffective.

Monopoly becomes an effective argument when harm to the public is shown. In *Florida Accountants Association v. Dandelake*,¹²⁰ a group of accountants attacked as unreasonable a Florida statute which restricted the use of the word "accountant" to certified public accountants. There were only 751 C.P.A.'s in the state, and many of the smaller counties had none at all. Thus, if non-certified accountants were not allowed to publicize their services, the demand for accountants would have far exceeded the supply. Moreover, the non-certified accountants, while not expert in all phases of accounting, were fully capable of

112. *England v. Louisiana State Bd. of Medical Examiners*, 126 So.2d 51, 56 (La. App. 1960).

113. *England v. Louisiana State Bd. of Medical Examiners*, 246 F. Supp. 993, 997 (E.D. La. 1965).

114. *State ex rel. State Bd. of Medicine v. Smith*, 81 Idaho 103, 110, 337 P.2d 938, 941 (1959); cf. *Rabin v. Conner*, 174 So.2d 721, 726 (Fla. 1965).

115. *State ex rel. State Bd. of Medicine v. Smith*, 81 Idaho 103, 110, 337 P.2d 938, 942 (1959).

116. *State v. Biggs*, 133 N.C. 729, 46 S.E. 401 (1903).

117. Compare Moore, *The Purpose of Licensing*, 4 J.L. & ECON. 93 (1961) (public interest), with Friedman, *Freedom of Contract and Occupational Licensing 1890-1910: A Legal and Social Study*, 53 CALIF. L. REV. 487, 505 (1965) (economics).

118. *Florida Accountants Ass'n v. Dandelake*, 98 So.2d 323 (Fla. 1957).

119. See *England v. Louisiana State Bd. of Medical Examiners*, 246 F. Supp. 993, 996 (E.D. La. 1965); *Rabin v. Conner*, 174 So.2d 721, 725-26 (Fla. 1965).

120. 98 So.2d 323 (Fla. 1957).

dealing with routine matters. The Supreme Court of Florida invalidated the statute because it created a monopoly which deprived noncertified accountants of their right to practice, and cast an undue hardship on small businessmen who were dependent on accountants' services.

A similar argument is available in the health services field. There is a nationwide shortage of qualified physicians,¹²¹ coupled with a growing demand for medical services.¹²² The projected number of practicing physicians available in the future will continue to be inadequate.¹²³ Therefore, a doctor is a limited community resource. "There are not enough of him in the United States today to warrant wasting a minute of his education and experience on jobs others can do as well."¹²⁴ If the limited practitioner can competently meet part of the demand for health care, his status is similar to that of the noncertified accountant in *Dandelake*. It is at least arguable that a monopoly may not be granted to a profession which is unable to meet the needs of the public, when others are able to satisfy at least a part of that need.

D. *Lack of Necessity*

A long line of Florida cases holds that regulations adopted in the exercise of the police power must be "fairly necessary" to secure the public welfare.¹²⁵ Most of these decisions invalidated regulations seeking to control economic competition¹²⁶ or marketing practices,¹²⁷ or to limit compensation for property "taken" by the state.¹²⁸ Courts have traditionally granted the legislature greater discretion in regulating the vital area of public health than in controlling private enterprise and property rights.¹²⁹ Therefore, these decisions offer little direct support to limited practitioners seeking to attack the reasonableness of the medical practice act.

The "necessity" principle has been extended beyond the confines of private enterprise and property rights when the state has attempted to regulate "innocent acts." In *L. Maxcy, Inc. v. Mayo*,¹³⁰ the Supreme

121. NAT'L ADVISORY COMM'N ON HEALTH MANPOWER, REPORT OF THE NATIONAL ADVISORY COMMISSION ON HEALTH MANPOWER 6 (1967) [hereinafter cited as HEALTH REPORT].

122. See H. SOMERS & A. SOMERS, DOCTORS, PATIENTS, AND HEALTH INSURANCE (1961).

123. See U.S. SURGEON GENERAL'S CONSULTANT GROUP ON MEDICAL EDUCATION, PHYSICIANS FOR A GROWING AMERICA (Public Health Service Pub. No. 709, 1959); HEALTH REPORT, *supra* note 121.

124. NAT'L COMM'N ON COMMUNITY HEALTH SERVICES, HEALTH IS A COMMUNITY AFFAIR 22 (1966).

125. *E.g.*, Zabel v. Pinellas County Water & Navigation Control Auth., 171 So.2d 376 (Fla. 1965); Corneal v. State Plant Bd., 95 So.2d 1, 4 (Fla. 1957) ("really necessary"); Florida Citrus Comm'n v. Golden Gift, Inc., 91 So.2d 657, 660 (Fla. 1956); State *ex rel.* Fulton v. Ives, 123 Fla. 401, 412, 167 So. 394, 400 (1936).

126. State *ex rel.* Fulton v. Ives, 123 Fla. 401, 167 So. 394 (1936).

127. Florida Citrus Comm'n v. Golden Gift, Inc., 91 So.2d 657 (Fla. 1956).

128. Corneal v. State Plant Bd., 95 So.2d 1, 4 (Fla. 1957).

129. See, *e.g.*, Semler v. Oregon State Bd. of Dental Examiners, 294 U.S. 608, 612 (1935).

130. 103 Fla. 552, 139 So. 121 (1932) [hereinafter cited as *Maxcy*].

Court of Florida held that acts which are not harmful in themselves may be regulated only when such regulation is "reasonably required" for the accomplishment of a valid legislative purpose. The *Maxcy* "innocent acts" doctrine was extended to health regulations in *State v. Leone*.¹³¹ A Florida statute required the supervision of all retail drug establishments by a licensed pharmacist whenever these establishments were open for business.¹³² The Supreme Court of Florida struck this statute as unreasonable. It recognized that the state might, in the interest of public health, require potentially dangerous drugs and medicines to be sold only under the supervision of a licensed pharmacist. However, modern drug stores sell many non-controlled drugs and non-medical goods which require no pharmaceutical skill in their preparation and sale. The sale of these goods involves no threat to the public health, and thus comes within the *Maxcy* "innocent acts" doctrine.¹³³ In order to regulate such acts as a health measure, the regulation

must be necessary, i.e. must be essential, to the reasonable accomplishment of the desired goal. . . . If there is a choice of ways in which government can reasonably attain a valid goal necessary to the public interest, it must elect that course which will infringe the least on the rights of the individual.¹³⁴

In both *Maxcy* and *Leone*, the state argued that although the innocent act, when viewed in isolation, presented no threat to the public interest, it was part of a larger class of activities which did threaten the public. The state invoked a recognized exception to the "innocent acts" doctrine:

Acts innocent and innocuous in themselves may . . . be prohibited, if this is practically made necessary to be done, in order to secure efficient enforcement of valid police regulations covering the same general field.¹³⁵

This argument was rejected in both cases, because there existed other methods of preventing the general evil which did not interfere with individual freedom. Even though these other methods might present greater difficulty of enforcement, "interference or sacrifice of private rights can never be justified nor sanctioned merely to make it more convenient or easier for the State to achieve the desired end."¹³⁶

The federal test is more lenient. If a legislative enactment "tend[s]

131. 118 So.2d 781 (Fla. 1960) [hereinafter cited as *Leone*].

132. Fla. Laws 1953, ch. 28150, § 1. This law was codified at the time of the *Leone* decision in FLA. STAT. § 465.18 (1959).

133. 118 So.2d at 784.

134. *Id.* at 784-85.

135. *L. Maxcy, Inc. v. Mayo*, 103 Fla. 552, 572-73, 139 So. 121, 129-30 (1931).

136. *State v. Leone*, 118 So.2d 781, 785 (Fla. 1960). A similar result was reached in *Delmonico v. State*, 115 So.2d 368 (Fla. 1963).

to diminish an evil"¹³⁷ and is not "arbitrary or unreasonable"¹³⁸ it will be upheld. The law "may enact a needless, wasteful requirement in many cases. But it is for the legislature, not the courts, to balance the advantages and disadvantages of the new requirement."¹³⁹

Under Florida law, if a limited practitioner can demonstrate that his treatment offers no substantial threat to the health of his patients, he would probably fall within the scope of the "innocent acts" doctrine. The state could not successfully contend that he should be barred from practice in order to render enforcement easier against quacks. In a federal forum, the "innocent acts" argument would have little chance of success.

E. *The Nature of the Practice*

Most of the cases which have decided the question of the reasonableness of the medical practice acts involved cultists claiming to practice a complete healing art. Few cultists were able to convince the courts that their form of practice offered a viable alternative to the practice of medicine. This is not surprising, because their methods generally did not have a scientifically accepted foundation.¹⁴⁰ With the exception of chiropractic, which enjoys legislative protection,¹⁴¹ the problem of non-scientific healers has been brought under reasonable control.¹⁴² Unfortunately, statutes and judicial doctrines which were designed to prevent unscientific practices now threaten to stifle the growth of scientifically-valid treatment which is not offered as a substitute for medicine, but as a valuable part of it.

The Supreme Court of Florida has adopted the *England* approach of examining the characteristics of the practice in order to determine whether the statutory requirements, as applied, are reasonable.¹⁴³ In *Snedeker v. Vernmar, Ltd.*,¹⁴⁴ operators of weight-reducing spas challenged a statute which required them to complete a course of instruction in physiology, anatomy, massage and hydrotherapy. Their operation was chiefly confined to electrical machines. The court noted that the educational requirements would not make the operators "more competent *in their particular occupation*."¹⁴⁵ "Many of the statutory prescriptions are obviously unrelated to competent performance of the

137. *Roschen v. Ward*, 279 U.S. 337, 339 (1929).

138. *Graves v. Minnesota*, 272 U.S. 425, 428 (1926).

139. *Williamson v. Lee Optical Co.*, 348 U.S. 483, 487 (1955). Florida has adopted a similar position in the narrow area of election laws. *Holley v. Adams*, 238 So.2d 401, 405 (Fla. 1970).

140. *Licensure of Physicians*, *supra* note 1 at 298.

141. *E.g.*, FLA. STAT. ch. 460 (1971).

142. *Licensure of Physicians*, *supra* note 1, at 298.

143. *England v. Louisiana State Bd. of Medical Examiners*, 263 F.2d 661, 674 (5th Cir. 1959). See note 103, *supra*, and accompanying text.

144. 151 So.2d 439 (Fla. 1963) [hereinafter cited as *Snedeker*].

145. *Id.* at 442 (emphasis added).

limited activities involved in appellees' operations"¹⁴⁶ On this basis the court concluded that the statute was unreasonable as applied.

Snedeker implicitly validates the concept of limited practice. It allows a limited practitioner to establish the unreasonableness of the medical practice act as applied to him by showing that mastery of the required subjects would not substantially increase the competence of his particular form of treatment.

VI. CONCLUSION

Florida offers limited practitioners a favorable forum for an attack on the reasonableness of medical licensing laws. Additionally, an equal protection argument has some chance of success. Common sense rebels against a regulatory system which legitimizes back-poppers and naturopaths, while denying even a limited right of practice to nutritionists, non-hospital paramedical technicians, and scientific practitioners of developing forms of treatment.

If Florida Statutes, chapter 458 (1971), or its equivalent in another state, is held invalid as applied to limited practitioners, a sudden renaissance of quackery need not be feared. Reasonable alternatives to total prohibition and medical anarchy do exist.¹⁴⁷ There is little to be feared, for example, from the separate licensing of qualified nutritionists. Reasonable educational qualifications can be established to protect the public from "quacks, adventurers and charlatans."¹⁴⁸ As long as the statutory prohibition against the use of the title "Dr." by non-M.D.'s¹⁴⁹ is maintained, there is no danger that the public will be misled by the existence of new forms of limited practice.¹⁵⁰ Such a danger could be eliminated by the simple expedient of requiring limited practitioners to identify themselves in a prescribed manner.

Forms of practice should be responsive to advances in medical science, free of unreasonably restrictive legal definitions. Florida's licensing law does not permit such growth, and is thus a proper subject for judicial surgery.

146. *Id.*

147. *Cf. Snedeker v. Vernmar, Ltd.*, 151 So.2d 439, 442 (Fla. 1963): "Occupational regulations of some nature might . . . be lawfully imposed."

148. *Hawker v. New York*, 170 U.S. 189, 195 (1898).

149. FLA. STAT. § 458.15(2)(c) (1971).

150. *Cf. Florida Accountants Ass'n v. Dandelake*, 98 So.2d 323, 329 (Fla. 1957).