

# **The Historical Background of the German Law Regulating Health Practitioners**

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## Preface

Respect and humility in the face of natural systems are not archaic virtues but should constitute an integral part of modern medicine. We need to avoid placing such high value on technical achievements that we fail to acknowledge the opportunities nature offers and its inherent powers of healing. It is important that we accept that human beings are and will remain part of nature. We have no influence over the fact that we are born or that we will die, but we do control one aspect. We are responsible for what we make out of our lives. This alone is sufficient reason to profit from our forefathers' wealth of experience and to learn from their mistakes.

In the course of my research I read numerous historic documents on the subject of medicine and health. Judging from the dates of the documents one might assume that the information they contain is equally antiquated. Far from it! The knowledge they contain is as significant today as it was hundreds of years ago when they were created. Modern medicine should not be viewed from a current scientific perspective alone, but should also take into account *neuen alten Heilmethoden* (new forms of complementary medicine). The wealth of experience gathered over centuries of empirical natural medicine cannot be replaced by modern scientific medicine.

Complementary medicine and mainstream medicine should both take advantage of the wealth of experience and knowledge gained over many years. Instead, the two disciplines are in disagreement as to which is entitled to explain how healing functions. Advocates of both disciplines should be aware of the fact that arrogance and a mutual lack of respect will not lead to a common dialogue.

The aim of this paper is to make a contribution to this dialogue. At the same time I will highlight deficiencies on the part of both parties in their practice of medicine. The greatest drawback regarding complementary medicine is that official authorization to practice alternative medicine represents a *carte blanche* for quackery. In contrast, the goal of authorization should be that every practitioner is aware of the responsibility associated with his ability. The shortcoming of mainstream medicine is that its expertise is based on

roughly 150 years of experience. Very little consideration is given to the roughly 18000 years of experience of naturopathic medicine.

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# 1. Introduction

From very early on man has relied on the natural recuperative powers of the human body and has taken a great interest in the subject. For the Greeks and Romans natural healing represented a challenge to scientific medicine. The powerful senator Cato the Elder banned the medical practitioners from Rome as he feared “that the foreign doctors (there were no Roman doctors at the time) had conspired among themselves to kill the Romans with their remedies and cures.”<sup>1</sup> We see that in ancient times there were already conflicts between naturopathy and medicine which over the years have continued to play a very important role in the advancement of both disciplines.

Since Roman times numerous influences have resulted in medicine developing differently in various parts of the world. In the western world, predominantly during the Middle Ages, the church had a decisive influence on the development of medicine. In the western world, the fact that the church forbade dissection<sup>2</sup> resulted in a much more superficial understanding of anatomy than in the Asian world. The effects of this are still noticeable today. Western medicine fails to emphasize the holistic understanding of the complex functionality of the human body which would have been gained through dissection and partitions medical teaching into separate disciplines.<sup>3</sup> Accordingly, medical knowledge was investigated quite differently in the two cultures. The result is greatly differing medical approaches and developments.

For those who are allowed to practice complementary medicine, investigating the history of natural healing with the aim of encouraging mutual understanding between conventional medicine and alternative methods of healing is an important aspect. Taking a historical approach will be of particular value to the more recent disciplines of complementary medicine, such as osteopathy<sup>4</sup>, in determining how professional accreditation should be organized.

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<sup>1</sup> Glasscheib, 1961, 235.

<sup>2</sup> Neuburger, 1911, 432.

<sup>3</sup> Wolf Becher, *Missstände im Heilwesen*, Berlin, 1913, 1043.

<sup>4</sup> [www.osteopathie.de/Osteopathie-Ausbildung](http://www.osteopathie.de/Osteopathie-Ausbildung)

This paper addresses the development of medicine. It is important to achieve an objective perspective of both conventional and complementary medicine. However, many sources derive from the perspective of persons not licensed to practice medicine and, as a result, there is the risk of a biased evaluation on the part of what conventional medicine views as the opposing party. In spite of the fact that, to a certain extent, sources originate from one side, it is particularly important to me to present an objective view of the subject in this paper.

The path of medicine leads through diverse and, in part, extremely rigid systems, the patterns and effects of which are still apparent in today's social and everyday behavior and are so deeply rooted that it is often difficult to recognize and deal with them. Certain patterns are bound to emerge. These are not intended as a provocation, but rather as an example of constructive criticism of systems.

A well-founded and thorough knowledge of the individual stages of development and their background are required to establish the solid foundation necessary for a productive dialogue between representatives of conventional medicine and complementary medicine.

For this reason, I have intentionally adhered to the historical chronology. Sources derive from general history and medical history, collected and researched at the Federal Archive in Berlin, in the Secret Central Archives of Prussian Cultural Possession in Berlin (Geheimen Staatsarchiv Preußischer Kulturbesitz), the Humboldt University in Berlin and in the Bavarian State Library in Munich, as well as Internet articles and generally recognized reference books.

The basis for this paper is historical literature research. Literature studies serve to acquire an overview of the current state of research in particular subject areas. The aim is to document the current status of research and to encourage further debate in associated areas. The goal of my work is to present the development of complementary medicine up to the enactment of the *Heilpraktikergesetz* (German law regulating health practitioners) in order to shed light on the validity of its application to new areas of complementary medicine. The intention is to provide all medical practitioners, in particular physicians, health

practitioners and medical practitioners of complementary medicine, with a new perspective in respect of their dealings with people and medicine. This should be taken into consideration, but not viewed as a new form of knowledge.

A further aspect is the way these laws are currently applied. This point will necessitate further historical and legal research which extends beyond the framework of this Master's Thesis, but could certainly result in further interesting debates.

I would like to begin my treatment of the history of naturopathy with a quote from Antoine De Saint Exupéry: "Perfection is achieved, not when there is nothing more to add, but when there is nothing left to take away."<sup>5</sup>

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<sup>5</sup> Antoine de Saint Exupéry, Wind Sand und Sterne. Rauchverlag 1917

## **2. Chronological Synopsis of Medical History from its Onset to the Present**

### ***2.1 Medicine from Antiquity to the Middles Ages***

The first records of “primitive medicine” are found in prehistoric cave and cliff drawings and the carvings of primitive tribes. In Europe they are found during the Mesolithic and Neolithic Periods and date back to the period between 18000 – 4000 BC.<sup>6</sup>

In these early times, the ability to promote healing in human beings probably developed by observing the way animals dealt with healing. Initially, therefore, medicine was purely empirical and guided by the example of nature. The first surgical interventions can be traced to this stage of development when they were used for the treatment of fractures, trepanation and for certain customary rituals (ritual and sexual themes).<sup>7</sup>

This phase of early primitive medicine was followed by the medicine of early antiquity. Some of the outstanding doctors of this period deserve special mention as their theories influenced medicine for many years to come.

When we refer to ancient medicine, the period of reference is between 700 – 100 BC. This is the period during which the medical teachings of the Greeks were developed and applied. The period includes the pre-Hippocratic medical practitioners, the Knidos school (700 – 500 BC), the Kos school or the classical Hippocratic teachings (500 – 400 BC), the Hellenistic medicine of the sects (300 – 100 BC, the Hellenistic and Roman era) and the medical system of Galen.<sup>8</sup> Each of these schools had its own theories which they applied in practice. They were all concerned with the questions of what the human body consisted of and when a person could be considered ill or healthy.

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<sup>6</sup> Diepgen-Goerke, 1960, 1.

<sup>7</sup> Ibid.

<sup>8</sup> Elftheriadis, 1991, 31.



“The tendency to free medicine of its ancient religious and mythical traits and to confer it with a rational, naturalistic character is viewed as an achievement of Hippocrates (460 – 357 BC) and as the origin of medicine.”<sup>9</sup>

With his famous sentence “Nature is the healer of all disease.”<sup>10</sup> Hippocrates molded and influenced the development of medicine in Germany and Europe over several thousand years. Alternative medicine is based on this concept. His teachings are “the origin of humoral pathology.”<sup>11</sup> “The human body consists of blood, phlegm, black bile, and yellow bile. These constitute the nature of the body and are responsible for health or illness. The body is at its healthiest when these [constituents] are appropriately balanced in respect of composition, properties and amount and are well blended. A person is ill when one of these [the constituents] is present in an amount which is too little or too great or is separate from the other constituents and not mixed with the entirety of the others...”<sup>12</sup> For the purposes of diagnosis, in addition to the blood, phlegm, black bile, and yellow bile, the patient’s medical record, and the environment and climate in which the patient lived were taken into account.

In addition to Hippocrates, Claudius Galenus (130 – 200 AD) from Pergamon had a decisive influence on the understanding of healing. He was one of the last, and presumably most influential, doctors of the ancient world. As doctor to the gladiators he gained a wealth of experience in the treatment of injuries. He was also successful in the area of chiropractic medicine, as well as internal and dietary treatments. It was not surprising then that he was appointed personal physician to the emperor. He also published profusely. “He was one of the most productive medical authors of all time.”<sup>13</sup> His anatomical works (15 volumes) provided medicine with a broad scientific basis.

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<sup>9</sup> Ibid.

<sup>10</sup> Glasscheib, 1961, 236.

<sup>11</sup> Humoral pathology: four primary fluids (blood = sanguine, phlegm = phlegmatic, yellow bile = choleric and black bile = melancholic Galle) (Baranski, 1871) (v. d. Driesch) *Elftheriadis*, 1991, S. 33

<sup>12</sup> *Die natur des Menschen*, Vol. VI, 38, Littré in *Elftheriadis*, 1991, 31.

<sup>13</sup> Freder, 2003, 19.

Galen added the term organ-based diseases to humoral pathology and differentiated between diseases of the tissues, humoral diseases and organ-based diseases.<sup>14</sup> This differentiation enabled him to successfully treat numerous clinical cases. He also distinguished between primary idiopathic<sup>15</sup> and secondary sympathetic<sup>16</sup> diseases, contributing to a growth in the intentional application of Galenic theory in preference to Hippocratic.<sup>17</sup>

Galenus' anatomical experiments enabled him to make significant therapeutic advances at numerous levels compared with Hippocratic practice , e.g. medullary transaction<sup>18</sup> “which ultimately enabled him to successfully treat paralysis in limbs.”<sup>19</sup>

Galenus' research extended well beyond the field of medicine. On the basis of his medical research, he also formulated theories for other areas of life which he passed on in his extensive written works. This made him one of the most exceptional physicians of this period.

The ancient Hippocratic medical theories were enhanced and extended by Galen and remained applicable up to the 18<sup>th</sup> century.

Summary:

Records of the origin of medicine can be traced as far back as approx. 18000 BC. Hippocrates distinguished between diseases of the tissues, the humors and the organs. Galen subsequently added the term organ-based disease to human pathology. As doctors of ancient medicine, both exerted significant influence on the course of medicine up to the 18<sup>th</sup> century.

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<sup>14</sup> Elftheriadis, 1991, 104.

<sup>15</sup> W. Pschyrembel, 1991, 761.

<sup>16</sup> Ibid, 1625.

<sup>17</sup> Elftheriadis, 1991, 136.

<sup>18</sup> Lichtenthaeler 1982, 210.

<sup>19</sup> Elftheriadis, 1991, 137.

## ***2.2 Medicine from the Middle Ages up to the Enactment of the Commercial Code 1869/71***

In the period following Galen the legionnaires disseminated Greek and Roman medical knowledge to the Rhine, the Danube and the westernmost Roman provinces. The spread of this knowledge “was in no way restricted to the Roman field hospitals and camps, but also became firmly established outside Italy as evinced by the reputation of the Gallo-Roman schools of medicine and the esteem granted to the Gallo-Roman medical practitioners.”<sup>20</sup>

Migration and Christian missionary activities “which during the course of the Middle Ages not only evangelized the entire Western world, but also disseminated the seeds of ancient culture along with the gospel in parts of the world which the Roman warriors never set foot in,”<sup>21</sup> also spread this knowledge.

The triumphal procession of medical culture which commenced in antiquity and continued into the Middle Ages resulted in the repression of primitive medicine. However, knowledge about Celtic medicine can be found in the historical writings of authors from ancient times, in particular Plinius (*Naturalis historia*). Above all, they provide information about the Druids and their knowledge of nature and the art of healing.<sup>22</sup>

In general, the medicine of the Middle Ages can be characterized by the fact that it was strongly influenced by the philosophy of the times and religious thinking. Scholars were primarily interested in the aspects of medicine related to the humanities.<sup>23</sup> In the early part of the Middle Ages positions in education and science, as well as in medical practice, were primarily occupied by the clergy and priests where the empirically trained practitioners of

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<sup>20</sup> Neuburger, 1911, 233.

<sup>21</sup> Ibid.

<sup>22</sup> Druidism – originally perhaps not an Indo-Germanic institution- was brought to the continent from Britain but remained unknown in Gallia cisalpina, in the Celtic regions east of the Rhine and in the Danube Basin, likewise to the Celts in Asia Minor. The Druids, who were highly respected for their knowledge and feared for their magic, built up an extremely powerful corporation whose members were active as priests and seers, as teachers and educators, as judges and doctors. Their specialized knowledge covered a wide spectrum. Theology, moral philosophy, psychology, oratory, natural history, mathematics, astronomy, law, pharmacy, music, poetry and magic, all these subjects and more had to be mastered by the Druids and learned by heart because it was forbidden to put them down in writing. This ensured that the teachings were not disclosed. Based on Neuburger, 1911

<sup>23</sup> Neuburger, 1911, 244.

folk medicine could scarcely compete with them.<sup>24</sup> At the height of the Middle Ages medicine continued to be strongly influenced by religion, but as a result of the Salerno school naturopathy once again assumed a role in the healing process. With the Salerno school “rigid medical life finally awoke from a period of latency to fresh vibrant activity.”<sup>25</sup> According to Neuburger, “due to the legendary quality of the sources, it cannot be clearly established which influences were responsible for the fame of the teaching institute in the 10<sup>th</sup> century but one thing is clear, the Salerno school was definitely not a foundation of the church. Due to its introduction of a laical character it occupied an isolated position in the midst of medicine dominated by the clergy and teaching institutions run by the clergy.”<sup>26</sup> The Renaissance of medicine and the final days of the Middle Ages were characterized by a strongly dialectical overall representation of medicine. At the end of the Middle Ages a theoretical exam was added to the medical course of studies. At that time the course of study lasted 4-5 years with an intermittent baccalaureate exam. This distinguished the “doctor from quack doctor and the empiricist with practical training from the practitioner of folk medicine”.<sup>27</sup>

This heralded the age of medical regulation. The first regulations for medicine, which restricted the practice of medicine to certified doctors, were passed in Sicily and originated in the 13<sup>th</sup> century.<sup>28</sup> The most well-known regulations from Kaiser Friedrichs II can be found in *libri Augustalis*<sup>29</sup>. “Regulations essentially covered the following points:

1. Training of the medical practitioners
2. Regulation of the practice of doctors and chemists with exclusive rights
3. Classification of the skills of the medical professions
4. Charges”<sup>30</sup>

In Germany, legislation of the medical profession was first addressed during the reign of Karl V with the enactment of what was called the *Carolina*. “It didn’t explicitly prohibit

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<sup>24</sup> Diepgen-Goerke, 1960, 17.

<sup>25</sup> Neuburger, 1911, 279.

<sup>26</sup> Ibid, 281.

<sup>27</sup> Diepgen-Görke, 1960, 20.

<sup>28</sup> Dünisch, Kommentar HP-Gesetz, 2000, 1.

<sup>29</sup> W. H. Hein and K. Sappert, Die Medizinalverordnung Friedrich II., Eutin, 1957, in Stürzenbecher, 1966, 2.

<sup>30</sup> Ibid.

laymen from carrying out medical activities, but in accordance with Article 134 they were subject to penalty if the patient died as a result of lack of diligence or inadequate skill.”<sup>31</sup>

The large gap in time between the first medical regulations in 1500 AD and their actual implementation roughly 300 years later illustrates the complex of problems related to the history of medical regulation. What is interesting to observe is that there are many sources and documents related to the prehistory of medical regulation in which historians present conflicting arguments, with the result that many questions remain unanswered. Stürzenbecher quotes Alfons Fischer from his book about the history of the German healthcare system, “that the Brandenburg Medical Edict of 1685 marked the beginning of a new epoch for the German healthcare system.”<sup>32</sup> On the other hand, in Sudhoff-Meyer-Steineg’s textbook, the Medical Edict of 1685 is classified as repressive.<sup>33</sup> It is not the primary decree in respect of medical regulation, but can be assigned a certain level of significance as, according to Stürzenbecher, it prepared the way for the Medical Edict of 1725 which “resulted in fundamental changes in the healthcare system.”<sup>34</sup>

The medical historians Jauernig, Pistor and Artelt have dealt with this subject in detail. The results of their investigations, however, indicate that there are many gaps in the information. The possibility that more material may be located in archives cannot be ruled out. According to Stürzenbecher, it can scarcely be assumed that all documents were lost or confiscated.

The Medical Edicts of 1885 and 1725 were, of course, the source of renewed conflict between those who were licensed to practice medicine and those who were not. Use of the terms *Pfuscher* and *Störer* (quack and disrupter) need to be considered from the point of view prevalent at those times, i.e. from the mentality of the guilds. The terms referred to legal position rather than qualification. “A surgeon who is not a member of the ministry in Berlin or is a military surgeon and who practices his treatment in the city, although he may be a master, is a *Pfuscher*. The same applied to medics who were awarded a doctorate in a

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<sup>31</sup> Dünisch, Kommentar HP-Gesetz, 2000, 1.

<sup>32</sup> A. Fischer, Geschichte des deutschen Gesundheitswesens [Anm. 3] I, 331, in Stürzenbecher, 1966 S 6

<sup>33</sup> Sudhoff and Meyer-Steineg, Geschichte der Medizin im Überblick, 4. Edition. Jena 1950, 336 in: Stürzenbecher, 1966, 6.

<sup>34</sup> Stürzenbecher, 1966, 7.

medical faculty, but were not certified by the ‘obercollegium medicum’.”<sup>35</sup>

Changes in the responsibility of the state were behind the conflict. The medieval state was completely uninvolved in the area of healthcare legislation due to the fact that the Medical Edicts in the 16<sup>th</sup> and 17<sup>th</sup> centuries were municipal concerns and, as such, had a very restricted area of influence. This all changed following the Thirty Years War which ushered in an epoch of eudaimonie<sup>36</sup> in the political science of the 17<sup>th</sup> and 18<sup>th</sup> centuries. According to this philosophy the state perceived its greatest responsibility to be “providing everything which was conducive to the welfare of the people.”<sup>37</sup> A state governed by principles must also be concerned with the question of health and the related legislation.

Prussia assumed a pioneering role and, on 27 September 1725, enacted the famous Medical Edict, “which was motivated by numerous complex examples of disarray and extremely dangerous abuses in the fields of medicine, surgery and pharmacy. In addition, it acknowledged that there were persons from all sorts of classes, professions and crafts who presume to offer internal and external cures which contribute to the deterioration and disadvantage of the people. They even make their own medicines and distribute or sell these to patients, robbing many people of their health and well-being and even threatening their lives. Quackery will be subject to heavy penalties and even deportation.”<sup>38</sup>

Following the example of Prussia, during the 18<sup>th</sup> century medical edicts prohibiting quackery (*Kurpfuschereiverbot*) were passed in Darmstadt, Sachsen, Jüllich, Berg, Braunschweig, Bistum Hildesheim, Lippe-Detmold, etc. In the mid-19<sup>th</sup>. century bans on quackery entered the criminal code in most German states and education about the practice was even published in the press. This led to lawmakers pronouncing bans on quackery and making them public, but it was not possible to repress it altogether.

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<sup>35</sup> Ibid, 134.

<sup>36</sup> Eudaimonia (from the Greek *eu*: good or well-being and *daimon*: spirit, for Socrates it was the inner voice which advised one like a conscience; in classical ancient Greek *eudaimonia* means happiness), concept of a system of ethnics which declared felicity (in Latin *beatitudo*) to be the most elevated human possession or the goal of all human action [Http://www.Encaeta.de](http://www.Encaeta.de)

<sup>37</sup> Müller, 1929, 12.

<sup>38</sup> Ibid, 13-14.

The introduction of the commercial code<sup>39</sup> in 1869 resulted in the reintroduction of *Kurierfreiheit* (medical freedom for licensed and un-licensed practitioners). Treating illness once again became a free trade in Germany which anyone was allowed to practice without knowledge or skills being taken into consideration. What caused the state to undermine the judicial concept which had been established and extended over centuries by making such a fundamental change in the medical legislation?

Policies of the state were often influenced by philosophical thinking. The legislative branch of the state was closely associated with well-known philosophers, in this case Immanuel Kant (1724-1804). In Kant's opinion the state should abstain from all welfare work and at the most play an educational and supportive role. "Im freien Spiel der Kräfte, der freien Entfaltung aller individuellen Tätigkeit liegt nach der [manchesterlichen Philosophie] allein das Heil des Staates."<sup>40</sup> (Only the free interplay of powers, the free development of all individual activity determines the welfare of the state.)

Members of the Berlin Medical Society of the year 1869 and members of the Bundestag Dr. med. Löwe, Dr. Wigard and the layman von Henning formulated a petition: "Experience has shown that the ban on quackery has not had the intended success. The general public should not be prevented from being treated in the case of illness by the practitioner in whom they have the greatest trust." It concluded: "The ban on quackery creates exceptionally non-beneficial aspects for all parties. For this reason we sincerely hope that the upper parliament will not allow the existing state regulations to continue. Under the existing circumstances a proletariat of physicians is forming which by means of its privileged position and its various attempts to protect this position clearly produces more disadvantages for society than abolishment of the ban on quackery would."<sup>41</sup> According to Neustätter in his article *Kurierzwang und Kurpfuschereifreiheit, die nochmalige Zerstörung einer Legende* (The duty to cure and the freedom to practice quackery, the renewed destruction of a legend), this was motivated by the fact that "there is no doubt that the members of the medical community, represented by Dr. Wigard and Dr.

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<sup>39</sup> original text of the commercial code see Annex

<sup>40</sup> Müller, 1929, 16.

<sup>41</sup> Ibid, 16-17.

Löwe in the upper parliament were acting with full inner conviction and that their intention and aspiration was not to promote quackery, but rather to check it (namely by eliminating the fascination of that which is forbidden) and that they made their proposals completely of their own free will. In order to understand this reasoning it is necessary to think back to a period of time in which all compulsory measures, all concessionary measures, were perceived as remnants of a paternalistic system. Being associated with this system would have appeared to be an outright flaw. The speeches of these men gave the impression that, even in an area where the interests of their own profession were at stake, they wanted to be certain that no one could ever accuse them of being one-sided, biased or lacking in liberal principles.”<sup>42</sup>

K.H. Müller who has very similar views to those of Neustätter also supports this explanation. Reupke argued that one of the reasons *Kurierfreiheit* (medical freedom for licensed and un-licensed practitioners) was introduced was to free doctors of their *Kurierpflicht* (duty to cure) which the medical regulations had introduced. Virchow was one of the physicians who encouraged *Kurierfreiheit*.

As a consequence, the conflict between licensed and non-licensed medical practitioners escalated rather than being resolved. An additional source of conflict for licensed physicians was the fact that the number of lay practitioners increased disproportionately, rather than decreasing.

A statistical overview documenting the increase in lay practitioners in contrast to the expected decrease provides a greater understanding of the practice of medicine by non-licensed practitioners.

In 1929, the “Increase in Quacks” in the German Reich was documented in table form and published in the “Reichsgesundheitsblatt” (Reich Health Gazette).<sup>43</sup>

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<sup>42</sup> Ibid, 19.

<sup>43</sup> STHA, Medizinalkollegium I02, Vol. VI fol. | 137 | in Reupke, 1969, 141



- 1876                    670 lay practitioners
- 1887                    1,713 lay practitioners
- 1898                    3,059 lay practitioners
- 1909                    4,468 lay practitioners
- 1927                    11,761 lay practitioners

In the period between 1876 and 1927 there was an exponential increase in the number of lay practitioners by a factor of 17. In comparison to the concentration of physicians at that time the number of lay practitioners increased during this period by a factor of more than 5, in relation to the size of the population, by a factor of 11.<sup>44</sup>

The constant increase in the number of non-medically trained practitioners indicated by the statistics led to huge protests on the part of academically trained medical practitioners. Physicians used every possible means, at all levels of government, to effect regulations and restrictions on *Kurierfreiheit* (medical freedom for licensed and un-licensed practitioners) with the goal of halting the threatening growth of non-medically trained practitioners.

#### Summary:

With the end of antiquity the image of medicine changed. The triumphal march of conventional medicine versus naturopathy represses primitive medical practices. In the early Middle Ages medicine is strongly influenced by the scholars of the church. At the height of the Middle Ages the lay element regains a position as a result of the Salerno school. At the end of the Middle Ages the first university qualification for the study of medicine is introduced. A distinction is now made between physicians and the folk doctors with a craftsman's training. The age of medical regulation begins. This includes the *Kurpfuschereiverbot* (ban on quackery). The Commercial Code of 1869, introduced by Bismarck, reintroduces *Kurierfreiheit* (medical freedom for licensed and un-licensed practitioners). As a result, the number of non-medically trained practitioners continuously increases. This leads to strong protests from the academically trained medical practitioners.

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<sup>44</sup> STHA, Medizinalkollegium I02, Vol. II et seqq. | 1 | in Reupke, 1969, 141.  
 „Ärztlicher Zentralanzeiger Nr. 22, Jhg. 1901“, Artikel „Standesfragen und Berufsangelegenheiten“

Naturopathy becomes a strong antipole to conventional medicine. This leads to important developments in the areas of naturopathy and scientific medicine.

### ***2.3 Medicine during the Time of the Commercial Code 1869/71 up to the Onset of National Socialism***

A form of natural healing movement developed in order to “reduce mortality and to make a significant improvement in the health of the population by extending health services, not only through the development and extension of scientific medicine and the transition from symptomatic to causal therapy, but also by ensuring medical provision and the availability of a greater number of medical personnel and by the provision of insurance systems for all groups of the population.”<sup>45</sup> Towards the end of the 19<sup>th</sup> century an increasing number of natural healing associations were founded. At the same time, however, scientific medicine also experienced a boom. The natural healing associations invoked numerous well-known doctors and lay practitioners, such as Father Sebastian Kneipp (1821-1897), who had established a spa in Wörishofen in 1881. The *Kneipp-Bewegung* (Kneipp-Movement) was sponsored by the lay organization the *Kneipp-Bund* (Kneipp Federation) and the physician’s organization the *Kneippärzteebund* (Association of Kneipp Physicians). Kneipp therapy, as it was known, was a non-specific hydrotherapy for functional problems of the coronary, circulatory, respiratory and nervous systems. S. Kneipp’s hydrotherapy was empirically based and was not scientifically proven. The Kneipp movement was clerical and conservative in orientation and was linked to the Catholic Church.

Wilhelm Schüssler (1821-1893) propagated a mineral salt therapy and founded the *Biochemischer Bund Deutschland* (The Institute of Biochemistry). His teachings were associated with homeopathy and had no scientific basis. The administration of electrolytes alone was intended to control the course of illness. The *Biochemische Bund* had no clear political concept and had a bourgeois orientation. The farmer, Vincens Prießnitz (1799-1851), who developed a cold water therapy, was the founder of the *Deutscher Bund der Vereine für naturgemäße Lebens- und Heilweise* (Prießnitz-Bund) (German Association for Natural Lifestyle and Natural Healing). The bourgeois element also increased in significance in this organization during the twenties. There was no evidence of a political concept or a scientific foundation in the *Prießnitz-Bund*. Medical practitioners and laymen were both associated in this organization. A certain degree of progressiveness can be

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<sup>45</sup> Stürzenbecher, 1966, 143.

assigned to the land reform movement. This demanded that workers become the owners of small garden plots by means of land expropriation. During the Weimar Republic this important demand for expropriation was abandoned. Instead, land was to be made available for workers through purchase or lease.

The *Hahnemannbund* (Hahnemann Association) was a natural healing organization of considerable importance. This organization was based on a non-scientific method of treatment and was closely associated with the natural healing movement. It united both medical practitioners and lay therapists. The organization invoked the physician Samuel Hahnemann (1755-1843) whose therapeutic beliefs were consistently rejected by conventional medicine.<sup>46</sup>

“Three sources contributed to medicine: the intellectual-philosophical movement at the end of the 18<sup>th</sup> century, the folk medicine movement at the onset of the 19<sup>th</sup> century (Kneipp, etc.) and impulses which go back to the teachings of Hippocrates in antiquity (e.g. Hufeland).”<sup>47</sup>

The continuously increasing number of non-medically trained practitioners following the introduction of the Commercial Code of 1869 occasioned growing protest on the part of academically trained medical practitioners who demanded an extension of the laws and regulations. The outcome was centuries of regulations at all levels of government which significantly restricted *Kurierfreiheit* (medical freedom for licensed and un-licensed practitioners). Legal intervention regarding the practice of medicine by non-medically trained practitioners applied to the areas of:

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<sup>46</sup> Kratz, 2004, 19.

<sup>47</sup> Freder, 2003, 52.

- The use of titles
- The practice of medicine by traveling practitioners
- Private institutes and baths
- Medication and patent medicines
- Unfair competition
- Deception
- Negligence

A change in the Commercial Code made on 23 July 1879, §30 (The required license is exclusively granted to the proprietor, i.e. the person for whom the name and accounts of the business are effected and will be revoked in the case of unreliability on the part of this person in respect of the administration or management of the establishment.<sup>48</sup>) made it more difficult for non-medically trained practitioners to operate ‘private institutes and baths’.

The Commercial Code was extended on 1 July 1883. §56 determined that poison and wares containing poison, medication and patent medicines, as well as hernia supports, be excluded from sale, or offer for sale, by traveling salesmen.<sup>49</sup> In §56a, “the practice of medicine” by traveling traders was prohibited if they were not licensed practitioners.

The Prussian superior Court of Justice confirmed on 20.12.1900 that, in accordance with §§277, 360(8) of the Criminal Code of the German Reich, “under all circumstances the title of doctor may only be used by those licensed to practice in Germany”. The same paragraphs also provided protection against illegitimate claims to the title “Doctor”, “Candidate of Medici”, “Professor” and “Specialist” (such as “Specialist for Sexual Diseases”). This term was particularly favored by non-medically trained practitioners for the purposes of chicanery.

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<sup>48</sup> Müller, 1929, 40.

<sup>49</sup> Ibid, 56.

The practice of medicine by non-medically trained practitioners was further regulated by §§222, 230, 231, 232 (negligence) and §§263, 264 (deception) of the Criminal Code of the German Reich which were also used to inflict penalties for negligence and deception.

On 18.02.1927, a law to combat sexual diseases was enacted which prohibited non-medically trained practitioners from treating sexual diseases.

These changes and many others resulted in a bitter battle between the two parties. Fierce debates took place, not only between physicians and non-medically trained practitioners, but also among the licensed physicians themselves. The reason behind this was that the Central Association for Parity in Medical Practice which “aimed to ensure that the opportunity for scientific and practical competition of all healing methods be maintained and to prevent the natural healing methods, the physical-dietary therapy, homeopathy, biochemistry, etc. from being repressed or disadvantaged in favor of allopathic medicine.”<sup>50</sup>

The Central Association became a form of opposition to the physicians’ associations. The physicians’ associations used methods which were not always entirely acceptable to fight against the protection of parity and the alternative methods of healing with the aim of effecting their abolition.

“In the year 1911, in order to disseminate the idea of the parity of all healing methods to the broadest possible circles, the Central Association began to combine its regular general assembly with public congresses.”<sup>51</sup>

In order to create concern in all circles that had recognized the danger for the general public represented by the attempts of the physicians’ organizations to create a monopoly attention had to be clearly directed to the “grievances in the medical trade”. A submission was made to the Reichstag in Session 1909/10.

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<sup>50</sup> Schriften über Wesen und Bedeutung der Kurierfreiheit, 1913, 3.

<sup>51</sup> Ibid, 4.

The submission was divided into three parts. The first part was conducted by Dr. W. Wendlandt, the representative of the Prussian state parliament and a member of the board for the Union of Industrialists. He spoke about the part of the draft which was closely associated with German industry. He attempted to prove that the allegations regarding damages apparently caused by the chemical-pharmaceutical industry were unfounded and lacking in concrete evidence.

The second part was conducted by Dr. H.E. Krüger. He directed particular attention to the statistical basis for the draft law in reference to the practice of medicine by non-medically trained practitioners – “a statistical basis, which, as the commentator demonstrated, unfortunately had a completely pseudoscientific character which had led to the well-known assertion that anything could be proven by statistics and there were three sorts of lies, black lies, white lies and statistical lies.”<sup>52</sup>

Finally, M.E.G. Gottlieb, President of the Central Association for Parity in Medical Practice, explained the significance, the tasks and the goals of this organization.

In view of the fact that the two orators who preceded him had clearly argued that they considered the basic principles used for the evaluation of the problem of *Kurierfreiheit* (medical freedom for licensed and unlicensed practitioners) and for legislation to prevent grievances in the medical trade to be completely unexplored and unexplained, he concluded that “it is exactly for this reason that the Central Association for Parity in Medical Practice has the task of investigating these previously neglected basic principles with the greatest care and scientific accuracy. The three primary directions of this investigation should be to establish the sociological, legal and national economical significance of the problem. He perceived the main characteristic of this task to lie in their strictly scientific system to finally put an end to controversial quackery sailing under the flag of science.”<sup>53</sup>

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<sup>52</sup> Ibid.

<sup>53</sup> Ibid, 5.

The draft law was rejected by the Reich commission. In spite of this it has great relevance for current discussion.

At the onset of WWI there was a brief period where little discussion took place between licensed and non-licensed medical practitioners.

In the twenties, that is after WWI, medicine experienced a crisis, with the natural science paradigm of so-called conventional medicine at the center. On the one hand physicians denied the crisis and on the other hand they blamed the social insurance system for it. While the physicians were experiencing this crisis, the lay movement and quackery flourished. It would, therefore, be more appropriate to speak of a crisis of physicians, than of a crisis of medicine.

The social system introduced by Bismarck in 1883 was financed by the contributions of insured persons and their employers. This entitled the insured person to treatment by a doctor authorized by the health insurance company. The insurance companies formed alliances and rapidly gained powerful political and, above all, financial influence. One point of dispute was payment of the doctors by the insurance companies, which was lower than with private insurance companies. The approval procedure to become a recognized doctor by the insurance companies was also a thorn in the side of the doctors. As a consequence, the *Hartmannbund* (Hartmann Union) was founded in Leipzig in 1900 with the aim of protecting the economic interests of the doctors. Numerous doctors joined which greatly improved their bargaining position with the insurance companies. During the inflation of 1923/24 the health insurance companies were virtually bankrupt. As a result, doctors could only submit their charges on a quarterly basis. They went on strike. The health insurance companies reacted by opening their own out patient clinics and health care clinics which were recognized in 1924. In 1933 the National Socialist government abolished them.

The crisis of the 1920s led to the medical fraternity attempting to consolidate as a professional group and exert influence on the social system.



The extensive discussions during the “crisis of medicine” brought another issue to light, the natural science paradigm of so-called conventional medicine. Critics demanded a new direction in medicine accommodating knowledge not directly related to natural science and integrating vital and theological concepts. These discussions were undoubtedly of central importance for the foundation of the Hippokrates-Verlages (Hippocrates Publishing House)<sup>54</sup> and the further development of medicine under the National Socialists.

Intense legal debates and numerous disputes between non-licensed medical practitioners and physicians resulted and certainly contributed to the enactment of the *Heilpraktikergesetz* (the German law regulating health practitioners) on 17 February 1939.

Summary:

In a spirit of liberalism *Kurierfreiheit* (medical freedom for licensed and unlicensed practitioners) is reestablished with the Commercial Code of 1869. In accordance with §29 of the Commercial Code, the term “medical practitioner” may only be used by academically trained practitioners, however, *Heilkunst* (the art of healing) may be practiced by anyone without any specified requirements or skills.

In 1883, due to strong pressure by physicians, §56 is added to the Commercial Code prohibiting “traveling healers”. Further restrictions follow. The constantly increasing number of lay practitioners contributes dramatically to medical ignorance, with the result that in 1909 the Reichstag turns its attention to drafting a law dealing with grievances in medical matters. The draft fails and is rejected by the Reich Commission. WWI has little influence on events in medicine. In the 1920s doctors plummet into a momentous crisis, inflation drives the health insurance companies to the brink of financial ruin. Doctors can no longer settle their accounts on a monthly basis, but only quarterly and they go on strike. Doctors hold the social system responsible for the inadequate financing. Naturopaths

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<sup>54</sup> In 1925 the Hippokrates-Verlag (Hippocrates Publishing House) was founded with the acquisition of the *Ärztlichen Volksbuch* (Physicians’ Book). The goal was to overcome the crisis of medicine by reforming medicine in the spirit of Hippocrates. This implied the unification of the different branches of medicine which had been divided and wished to be disassociated from the one-sidedness of a medicine which had been reduced to mechanistic natural science and assimilate other knowledge. The *Ärztliche Volksbuch* which had jointly published representatives of all schools exemplified this goal. There were thoughts of founding a journal at a very early stage, but initially a project of this nature was not implemented.” D. Bothe, 1991, 45-46.

demand that non-scientific methods of treatment be accepted. The journal *Hippokrates* is founded. National Socialism causes a political turn of events.

## ***2.4 Medicine under National Socialism up to the Enactment of the Heilpraktikergesetz (German law regulating health practitioners) in 1939***

The growing confrontation between the naturopathy movement and scientific medicine forced the naturopathic organizations to join forces. The amalgamation took place on 19 January 1926 in Berlin. The umbrella organization was the *Reichsausschuss der gemeinnützigen Verbände der Volksheilbewegung* (Reich committee for the nonprofitmaking organizations of the movement for health in the population). This organization amalgamated all of the leading associations of the movement for health in the population; the *Biochemische Bund Deutschland* (German Biochemical Association), *Bund homöopathischer Laienvereine* (Association of Homeopathic Lay Practitioners), the *Deutsche Bund der Vereine für naturgemäße Lebens- und Heilweise* (German Association of Organizations for Natural Living and Healing), the *Kneipp-Bund* (Kneipp Federation), the *Bund der Felkevereine* and the *Zentralverband für Parität der Heilmethoden* (Central Association for Parity in Medical Practice).

They shared a common management committee. In 1926, the *Reichsausschuss der gemeinnützigen Verbände der Volksheilbewegung* (Reich committee for the nonprofitmaking organizations of the movement for health in the population) had roughly 5 million supporters.<sup>55</sup> This number of supporters was needed to parry the attacks of the conventional medical practitioners who were opposed to the legally protected *Kurierfreiheit* (medical freedom for licensed and unlicensed practitioners). The political clout of the naturopathy movement increased significantly. In 1933, the committee was renamed *Reichsausschuss der gemeinnützigen Verbände der Volksheilbewegung zur Hebung der Volksgesundheit* (Reich committee for the nonprofitmaking organizations of the movement for health in the population for the enhancement of public health). At this point membership had grown to 6-7 million. It was only with government support that success in gaining recognition from conventional medical practitioners was achieved. Dr. G. Wagner, head of the National Socialist Physicians' League paved the way as he could be certain of support from other National Socialist politicians.

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<sup>55</sup> Kratz, 2004, 22.

The public was informed about naturopathy through exhibitions about natural healing methods, e.g. in the German Hygiene Museum in Dresden on “The Healing Powers of Nature”<sup>56</sup> and public lectures. The “NS health leadership” tried to gain supporters in this way.

Naturopathy became a duty, as it were, as it had been recognized that “natural healing treatment had particular advantages for the doctor’s practice and hospital”<sup>57</sup>, due to the fact that with natural healing both the patient and the doctor were completely independent of the pharmacists which significantly reduced the economic burden. Later a natural healer wrote: “Biological healing is currently the ace in the hole. Anyone who values his reputation converted to biological thinking long ago.”<sup>58</sup>

In 1934, the northern and southern groups of the *Deutschen Verbandes der Ärzte für physikalische und diätische Behandlung* (German Physicians’ League for Physical and Dietary Treatment) (natural healing) and the *Kneipp-Ärztevereinigung* (Association of Kneipp Physicians) amalgamated with other biologically oriented physicians’ associations to form the “*Reichsabteilung `Naturärzte`*”, (National Socialist Branch of Naturopathic Doctors)<sup>59</sup>. This umbrella organization was conceived as an association of naturopathic doctors in order to establish equal footing with scientific medicine in the battle for recognition. The battle for the recognition of naturopathy had been forced by Dr. G. Wagner. He was one of the doctors in the fascistic health system who was investigating naturopathy intensively. As a member of the Reichstag and commissioner of the German Physicians’ League, he was the chairman of the *Deutschen Ärztevereins-Bunde* (German Medical Association) and the *Hartmannbund* (Hartmann Union). As the initiator and co-author of the Reich Physicians’ Decree of 13.12.1935, “which finally undertook the integration of German physicians in the nation” and, thereby, represented a means of

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<sup>56</sup> Kratz, 2004, 54.

<sup>57</sup> Ibid.

<sup>58</sup> Moebius, P.G., 1934, 955 et seq.

<sup>59</sup> Väh, O., 1935, 95.

disciplining physicians<sup>60</sup>, he became the advisor of the deputy leader (Rudolph Hess) in all matters of public health and became the main manager of “Public Health in the Reich Administration of the NSDAP (National Socialist German Workers Party).”<sup>61</sup>

It was no longer possible for conventional medical practitioners to block the naturopathy movement.

“Armed with this degree of power, Dr. Wagner became one of the first and most avid pioneers for the synthesis of conventional medicine and biological healing within the framework of *Neue Deutsche Heilkunde* (New German Medicine).”<sup>62</sup>

*Neue Deutsche Heilkunde* (New German Medicine) was not only used as a method of reducing costs for the health system of the Nazi party, but also acted as a tool intended to justify its existence in the event of war. The aim of amalgamating all of the state, military and party agencies responsible for healthcare in a single working group was to facilitate better discussion of problems related to the healthcare of the population and the armed forces in a war situation.

The efforts of Wagner to involve the physician in naturopathy proved to be a tedious undertaking. Proponents of the naturopathy movement repeatedly called attention to the lack of understanding in the population for natural healing. In 1939, leader of the *Prießnitz-Bund*, Paul Schirrmeister, once again felt compelled to make a comprehensive report about the naturopathy movement, “because the lack of understanding among the population regarding our aims is so great that it appears necessary to remind them of the origins and the goal of our movement for health in the population.”<sup>63</sup>

The restriction of *Kurierfreiheit* (medical freedom for licensed and unlicensed practitioners) was also an important aspect for Dr. Wagner, however, he only considered it

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<sup>60</sup> Special Edition of the German Physicians Journal (Dt. Ärzteblatt) honoring the 50th birthday of the Leader of the Reich Physicians, Sonderbeilage 68, 1938, **If**.

<sup>61</sup> Ibid.

<sup>62</sup> Kratz, 2004, 62.

<sup>63</sup> Ibid, 67.

to be justified “if the art of medicine is expanded to include natural means and it becomes a duty of the German physician to assume leadership of the lay movement.”<sup>64</sup>

The result was more or less firm integration in the nationally regulated socio-economic organism. Under the new arrangement the existing associations, alliances, chambers and federations were either dissolved or unified.

The following principles applied to all:

1. Principle of exclusiveness: there should only be one organization for each area of expertise.
2. Principle of compulsory membership: the choice of joining was not left up to the individual.
3. Principle of leadership: the respective “leader” would be selected by the Reich minister of the Interior.<sup>65</sup>

This resulted in the amalgamation of all naturopathy organizations in a single organization, the *Heilpraktikerbund Deutschland e.V.* with its head office in Munich. In the beginning, the organizations maintained their autonomy, but this changed in 1934 when all existing associations were disbanded and the *Heilpraktikerbund Deutschland, Reichsverband e.V.* (Reich Association of German Health Practitioners) was founded. The enactment of further laws once again placed considerable restrictions on the field of work for the alternative health practitioners.

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<sup>64</sup> Der Weg zu einer neuen deutschen Heilkunde. Dt. Ärzteblatt 66 (1936), 440 et seq.

<sup>65</sup> Freder, 2003, 71.

- Contrary to the unification of the public health system on 3.7.1934 the responsibility for monitoring for public health physicians was regulated uniformly. Im Gegensatz zur Vereinheitlichung des Gesundheitswesens vom 3.7.1934 wurde die Überwachungspflicht der Amtsärzte einheitlich geregelt.
- The Law for the Prevention of Hereditarily Diseased Offspring of 14.7.1933 stated that only physicians were allowed to carry out abortions, sterilization and castration.
- The Nursing Law (Law on the Regulation of Nursing) of 28.9.1938 was intended to regulate the number of training places for nurses.
- The Midwifery Law of 21.12.1938 determined that, apart from physicians, only qualified midwives could assist births.<sup>66</sup>

The Reich Physicians' Ordinance (RÄO) of 31.12.1935 introduced new regulations for the profession of physician. Public duties were regulated, a professional code of conduct was introduced and disciplinary proceedings, as well as a professional court came into being. §1 stipulated that the profession of physician was not a trade, §20 regulated the subdivision of the Reich chambers into physicians' chambers and district physician associations. It also became mandatory for all physicians to become members. The *Hartmannbund* (Hartmann Union) was dismantled and the *Kassenärztliche Vereinigung Deutschlands (KVD)* (an association of doctors approved by the health system) was founded. The term 'appointment' now replaced 'approbation'.

On 17 February 1939, the NS government adopted the *Heilpraktikergesetz*. (German law regulating health practitioners). This was followed by the first by-law on 18 February 1939 and the second by-law on 3 July 1941.

The fact that it took so long to restrict the *Kurierfreiheit* (medical freedom for licensed and un-licensed medical practitioners) was an indication of the uncertainty within the NS health leadership about how to deal the non-medically trained practitioners of natural healing.

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<sup>66</sup> Ibid, 71-72.

In 1933, at the Bavarian conference of Health Practitioners, Dr. Wagner explained: “[...] quackery has to be put to an end, quickly and energetically, but those health practitioners who satisfy the necessary requirements would be recognized by the state and awarded the redefined status and profession of health practitioner. [...] Quackery will be combated more strongly in the future, no longer by the physicians against the health practitioners, but by physicians and health practitioners against quacks.”<sup>67</sup>

This speech initiated the preparation of a draft law. This draft and a subsequent draft prepared by the Reich Ministry in 1934, however, did not meet with the approval of both parties. There was a change of opinion among the leadership of the Reich physicians in respect of the initial conciliatory position towards health practitioners and their readiness to negotiate. In 1937, Dr. Wagner declared that “toleration of the profession of health practitioners alongside the profession of academically trained physicians is not consistent with the principles of National Socialism.”<sup>68</sup> In 1938 Rudolph Hess held a meeting with all of the agencies and organizations concerned. The subject of this meeting was a draft drawn up by the Reich Minister which contained a complete ban on new health practitioners and a ban on training centers for health practitioners. Representatives of the health practitioners association rejected the draft law.

Hess had reached an agreement with Dr. Wagner that in the future there would only be one unified profession of physicians. A prerequisite was that, in the future, the natural healing methods used by the health practitioners would also be used and mastered by the physicians. If this were not the case, Hess would take measures to rescind the bans.

The *Heilkundegesetz* (German law regulating health practitioners) was intended to ensure that no additional professional group emerged alongside the physicians. The physicians, however, should feel obliged to accept successful natural healing methods and, thus, ensure that the population could continue to be treated with naturopathic methods.

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<sup>67</sup> Freder, 2003, 72-73.

<sup>68</sup> Ibid, 73.



Legal regulation was intended to establish an arrangement for the profession of health practitioner. This would eliminate the unrestricted *Kurierfreiheit* (medical freedom for licensed and unlicensed practitioners) in existence since 1869, which, due to its liberal principles, was not consistent with the principles of the authoritarian state. The law regulated the *practice of medicine*, the requirement to be granted *permission to practice healing activities without a medical qualification*, the legal description of *Heilpraktiker* (Health Practitioner) and the ban on new *Heilpraktiker* (Health Practitioners). It implied that persons who had practiced alternative healing up to this time and those who were currently undergoing training would be allowed to apply for a license as *Heilpraktiker* (Health Practitioner). Alternative dentistry was excluded and the Reich Minister of the Interior was given the power to exclude other alternative medical treatments from the law in agreement with the Deputy Führer.<sup>69</sup> The necessary penalty regulations were also covered by the law.

The first by-law regulated the procedure for the application for and the granting of permission, the reasons for denying permission, the right to appeal and the opportunities for retracting an appeal. An evaluation board was set up consisting of two physicians, two alternative medical practitioners and a chairman who belonged to neither of these groups. The first by-law appointed the *Deutsche Heilpraktikerschaft e.V.* (Association of German Healers) (*DH e.V.*) to be set up and act as the only professional organization for *Heilpraktiker* (Health Practitioners) with compulsory membership for all practitioners and stipulated that a constitution and professional code of conduct be drawn up subject to approval by the Reich Minister of the Interior in agreement with the Deputy Führer. The *DH e.V.* would be represented by a Reich Health Practitioner Leader and integrated in the NSDAP and, thereby, unified. In the second by-law the point regarding the denial of permission to practice was extended with the addition of “*When an investigation of knowledge and abilities indicates that the activity of the person concerned would represent a danger to the health of the population.*”<sup>70</sup>

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<sup>69</sup> Ibid, 75.

<sup>70</sup> Ibid.

On 28 August 1940, the constitution of the *DH e.V.*, having been accepted by the Reich Minister of the Interior on 9 August 1940, was compiled and entered in the Register of Associations at the Municipal Court in Munich on 7 September 1940. It regulated the professional rights and responsibilities of the *Heilpraktiker* (Health Practitioners), their relationship to patients, to the state and to each other, as well as the jurisdiction, institutions and disciplinary proceedings of the court regulating professional conduct. The Reich *Heilpraktiker* Leader was empowered to enact clauses in respect of implementation and special circumstances.<sup>71</sup>

The individual Articles are included in the Appendix.

The *Heilpraktikergesetz* (German law regulating health practitioners) was conceived in such a way that essentially no new licenses could be granted. In accordance with §1 para. 3, the most important prerequisite for the granting of a license to practice was that alternative medicine had been practiced prior to enactment of the law and, thereby, was applied as admission in the interest of the protection of vested rights.

The *Heilpraktikergesetz* (German law regulating health practitioners) and the first by-law did not contain any provisions regarding qualified training and examination as a prerequisite for the granting of a license.<sup>72</sup> There were various reasons behind this. One was that up to the enactment of the *Heilpraktikergesetz* (German law regulating health practitioners) there had been no legally approved training and examination process. Such an approved process would have resulted in irritation between the protection of vested interests and state requirements for professional qualification, due to the fact that professional qualifications as a prerequisite for licensing would have been difficult to reconcile with the function of granting a license as a transitional solution in the interest of protecting vested interests for those already practicing the profession.

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<sup>71</sup> Ibid, 75-76.

<sup>72</sup> Ibid, 78.

The only other prerequisites compiled for permission to practice were those relevant to the proof of “general reliability” (§2 Section 1 Parts a-h 1. DfVO).<sup>73</sup> Professional acceptability was only relevant for obtaining permission to practice in respect of ethical reliability, not professional reliability. This was also related to a license to practice being used as a transitional solution for those already practicing the profession.

Anyone who had not attracted attention through negligent actions or blameworthy behavior as a healer was simply assumed to be professionally reliable.

An important reason for this, however, was the fact that creating the impression of official recognition or a license to practice was to be avoided at all costs. This would have inevitably resulted in a confrontation with the physicians.

A final reason was that any compilation of official requirements for professional qualifications for complementary medicine would have had to include subjects such as homeopathy, naturopathic methods of diagnosis and therapy, or therapies with effects which conventional medicine viewed as a “placebo effect”. In this case, recognition would also have resulted in a confrontation with conventional medicine. The intention was to avoid this and wait until the situation sorted itself out, as it would do, due to the fact that no new practitioners could be trained.

In spite of this, there was no intention of leaving the *Heilk Praktiker* (health practitioners) to their own devices. “According to §6 of the professional code of conduct, within the framework of ‘general diligence’ *Heilk Praktiker* (health practitioners) were obliged to undertake further professional training and become acquainted with new methods of healing which were suitable for their practice. All *Heilk Praktiker* (health practitioners) were obliged to participate conscientiously in further training courses arranged by the *Deutschen Heilpraktikerschaft e.V.* (Association of German Healers) (DH e.V.) Attendance was monitored by means of identity cards and attestation cards, as well as the duty to participate. Unexcused absence was punished by means of warnings, fines and the

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<sup>73</sup> Ibid, 79.

initiation of proceedings in a court for professional conduct (§§37, 53 et seqq. of the Professional Code of Conduct).”<sup>74</sup>

With the enactment of the second by-law of 3 July 1941, §2 Section 1 of the first by-law was extended to include a further point. Permission to practice would not be granted “*When an investigation of the knowledge and abilities of the applicant indicates that the practice of alternative medicine by the person concerned would represent a danger to the health of the population.*”<sup>75</sup>

The second by-law was not enacted for the purpose of a professional qualification or anything similar. Its sole purpose was to *avert a health hazard*. For this purpose a basic knowledge of anatomy, physiology and pathology were required.

Due to the circumstances during the war years examination was not strictly enforced. On 10 July 1941, a decree from the Reich Minister of the Interior stipulated that the examination of applicants introduced by the second by-law should only be carried out if there was a suspicion that continued practice would represent a danger to the health of the population.

The health authorities, however, intensified examinations for all health practitioners which resulted in a great deal of protest.

The *DH e.V.* (Association of German Healers) reacted on 16 July 1941 by introducing a series of professional restrictions for all health practitioners which included a ban on treating “diseases which represented a danger to public safety”, the use of “any occult methods” for diagnosis or to determine the method of healing and or the remedy, as well as the treatment of cancer and infectious diseases with the exclusive use of magnetic, biochemical or chiropractic methods.

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<sup>74</sup> Ibid, 80.

<sup>75</sup> Ibid, 81.

Members were threatened with expulsion from the *DH e.V.* for noncompliance, which, in accordance with §7 of the first by-law, would result in the withdrawal of permission to practice.

On 22 October 1941 the head of the *DH e.V.* enacted the professional code of conduct for German health practitioners in accordance with §14 of the first by-law. Approval was granted by the Reich Minister of the Interior on 19 December 1941. The new professional code of conduct was applicable for all licensed and not yet licensed health practitioners in Germany.

Summary:

The rulers of the national socialist state make use of folk medicine and naturopathy, in part for reasons of power and racism and, in part, for political-economic reasons, due to the fact that natural healing methods are relatively inexpensive. The *New German Medicine* founded by Dr. G. Wagner is a synthesis of conventional medicine and biological healing. The intention is to put an end to quackery. Physicians and health practitioners jointly take up the battle against quacks.

In 1934 a draft law to combat quackery is proposed by the Reich Ministry of the Interior. Neither party (conventional physicians or naturopaths) accept the draft. Increased conflict regarding alternative and lay medicine arises, also within the community of physicians. The source of conflict is not primarily with regard to protecting the population, but rather a battle between conventional and non-conventional medicine.

R. Hess and Dr. G. Wagner reach an agreement that there should only be one medical profession in Germany, however, they take care that non-conventional naturopathy is included in conventional medical training.

On 17 February 1939 the *Heilpraktikergesetz* (German law regulating health practitioners) is enacted with the goal of making the *Heilpraktiker* (health practitioners) extinct.

## ***2.5 Medicine from the Enactment of the Heilpraktikergesetz (German Law Regulating Health Practitioners) to the Present***

Following the death of Dr. G. Wagner, the head of the National Socialist Physicians' League who died on 25 March 1939, Leonardo Conti took over the office. Shortly before his death Dr. Wagner had decisively influenced the organization of medicine in Germany. As a result of the ban on Jewish doctors, the restrictions on natural healing therapists imposed by the *Heilpraktikergesetz* (German law regulating health practitioners) and the fact that a third of all German doctors were in the military, there was an inadequate supply of medical care in Germany. This situation presented a challenge for the newly appointed head of the National Socialist physicians which he had to deal with quickly. One of his first measures was to license trainees and students after the fourth semester.<sup>76</sup>

Having been appointed to further offices by Rudolph Hess, it was an easy matter for L. Conti to influence the development of the synthesis of naturopathy and conventional medicine. L. Conti replaced Wagner's former confidant F. Bartels with his protégé K. Blome. This introduced a policy towards the naturopathy movement which was different to that introduced by Wagner. With Conti's influence, K. Blom's career advanced rapidly and he became the deputy head of the *Führerschule* in Alt-Rehse and the deputy head of the National Socialist Physicians. He was also a member of the advisory committee for the Chamber of Reich Physicians. As a result, Conti quickly had a man with important political functions at his side. Prior to the outbreak of WW2, the two health politicians attempted to effect an alliance between naturopathy and conventional medicine. The disturbances of the war, however, made this increasingly difficult. In 1941, in order to fully prevent the crisis of medicine, Conti declared that "physicians were beyond the antagonism between conventional medicine and naturopathy"<sup>77</sup> and, although discussion in both camps was still going strong, he emphasized that: "The antagonism no longer exists."<sup>78</sup>

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<sup>76</sup> München, medizinische Wochenschrift, 86 (1939), 1522, in: D. and H.-M. Kratz, 2004, 145-146.

<sup>77</sup> Kratz, 2004, 148.

<sup>78</sup> Ibid.

The goal of this announcement was to create the conflict-free zone on the “home front” which the NSDAP was striving for. As a result, the *New German Medicine* which Dr. Wagner had introduced became less and less important and conventional medicine increasingly consolidated its position.

In the course of the war Germany increasingly became the battlefield. Bomb attacks and confrontations on diverse fronts resulted in constant losses of hospitals and medical facilities and personnel. The result was that the dispute between naturopaths and medically trained personnel was finally pushed into the background. Providing rapid and effective medical care for the war victims, by whatever means available, was the only thing that mattered now. Leading health politicians referred more and more frequently to the scientific nature of medicine. “Genuine medicine ...would always remain exact science and research.”<sup>79</sup>

Now everything was at stake for the National Socialists. Every person who was capable of working had to be mobilized. For the NS health leadership, every form of illness represented a loss of the necessary ability to perform. The *New German Medicine* was introduced in the propaganda of the health politicians and, as a result, lost its true meaning.

In the course of the war, all of the individual associations of the naturopathy movement were disbanded and unified under the *Deutschen Volksgesundheitsbund* (German Health Association of the People). The war and, above all, the death of Dr. Wagner, weakened the concept of the *New German Medicine* to such an extent that following the war, which had dramatic and catastrophic consequences for the population, there was no longer the strength or interest necessary to develop a new concept for building up a *New German Medicine*, on the part of the physicians or the naturopathy movement.

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<sup>79</sup> Blome, Dt. Ärzteblatt 73, 1943, 158 et seq. in Kratz, 2004, 167.

## Summary:

Following the death of Dr. G. Wagner, L. Conti is appointed Leader of the Reich Physicians. The *New German Medicine* is forced into the background by the outbreak of WW2 in September 1939. L. Conti and his partner K. Blome are occupied with overcoming the crisis in medicine and the disruptions of the war. In 1941 they both announce that the crisis in medicine no longer exists and stifle the discussion about naturopathy in order to concentrate more fully on the medical care of the armed forces and the victims of war.

Germany increasingly becomes the battlefield and scientific medicine increasingly comes to the fore.

With the end of the war, which had dramatic consequences for Germany and the population, hardship takes priority over everything else. There is no interest in the dispute between conventional medicine and naturopathy.



### **3. Application of the Heilkundegesetz (German Law Regulating Health Practitioners) Today**

In 1947 the journal *Hippokrates* reappeared. With its appearance, the passionate debates about naturopathy and conventional medicine resumed.

After 1945, Dr. Werner Tiegel (1908-1962), medical practitioner for natural healing methods, was seen as the one to pave the way for the reorganization of naturopathic practitioners. He perceived the “importance of naturopathy in the post war period to be in providing information about natural living.”<sup>80</sup>

The efforts to find a new direction for naturopathy had paid off, however, in contrast to the period of National Socialism, it now occupied a position on the periphery of official medicine.

The efforts of the conventional medical practitioners to restrict the permission to practice alternative medicine exclusively to licensed physicians proved to be a difficult task. The question has still not been resolved. The *Bundesärzteordnung* (Federal Medical Practitioners’ Act) of 2 October 1961 (BGBl. I S. 1857, in the version from 4 February 1970, BGBl. I S.237) only dealt with the profession of the physician. It contained provisions regarding the training and licensing of a physician, but did not explain how alternative medicine practiced by the physician differed from the alternative medicine practiced by a health practitioner, a midwife, a physiotherapist or a nurse. The result was, and remains, as is generally known, the ever recurring debate about which areas of alternative medicine may, can or should be left to physicians and which areas of alternative medicine may, can or should be left to other healthcare professions. Strictly speaking, evidence of the principle of *Kurierfreiheit* (medical freedom for licensed and unlicensed practitioners) can still be perceived.

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<sup>80</sup> Bothe, D., 1991, 299.

The Reich Commercial Code, for example, contained a passage stating that persons who called themselves doctor required a license granted on the basis of proof of qualification. “This did not apply to the licensing and practice of alternative medicine but only covered those persons who used the title of doctor. As a result, §13 of the Federal Medical Practitioners’ Act did not penalize the unauthorized practice of alternative medicine, but only those who used the title of doctor without being a licensed doctor or authorized in accordance with §2 para. 2 or 3 to practice the profession of doctor or used a title which gave the impression they could be a doctor.”<sup>81</sup> This loophole in the system should have been eliminated by the *Heilpraktikergesetz* (German law regulating health practitioners) of 1939.

In §1, the law states that “anyone wishing to practice alternative medicine without being a licensed doctor” requires permission. The actual purpose of the *Heilpraktikergesetz*, which was to eliminate *Kurierfreiheit* and ban the establishment and maintenance of training centers (§4 *Heilpraktikergesetz*) for health practitioners, was not properly implemented by the legislators.

In an article in the NFW<sup>82</sup> (a legal periodical), Prof. Dr. Paul Bockelmann, an attorney in Munich, wrote the following regarding *Das Ende des Heilpraktikergesetzes* (the end of the German law regulating health practitioners): “...hence, from the very beginning the law was flawed by two significant defects, which were the reason it ultimately failed.”

The lack of consistency affected three areas. §6 para. 1 of the *Heilpraktikergesetz* excluded the field of dentistry. As a result *Kurierfreiheit* continued in this field. Further, the law permitted breaches of the *Kurierverbotes* which was designed to regulate non-medically trained practitioners. §6 para. 2 authorized the Reich Minister of the Interior to exempt ‘other medical facilities’ in addition to dentistry from the provisions of the *Heilpraktikergesetz*. Notably, the legislators failed to really deal with the principle behind the law, i.e. that only licensed medical practitioners be allowed to practice medicine. For all non-licensed practitioners who were practicing alternative medicine at the time the law

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<sup>81</sup> Mergen A., 1971, 19.

<sup>82</sup> Neue Juristische Wochenschrift Heft 25, 1966, 1145-1152.

came into effect (and wished to continue practicing) a transitional regulation was created which not only permitted them to continue their occupation, but, in fact bestowed the class of non-licensed healers, which was supposed to die out, with professional recognition. This was expressed in the awarding of the professional title of “*Heilpraktiker*” and the establishment of the Deutschen Heilpraktikerschaft e.V.’ (Association of German Healers) (§12 d. 1. DVO), in which according to §6 of the first by-law every *Heilpraktiker* was obliged to become a member.

§2 para. 1 of the *Heilpraktikergesetz* decreed that permission to practice alternative medicine could be granted to non-licensed practitioners ‘in exceptional cases’. The decision was left to the discretion of the responsible administrative body. §9 of the first by-law authorized the person in possession of exceptional permission to practice to use the title of ‘Doctor of Naturopathy’. There is, therefore, no evidence of an intention to consistently pursue the maxim that the authorization to practice alternative medicine be exclusively restricted to licensed physicians.<sup>83</sup>

This raises the question of how legislators objectively distinguish between medical and non-medical services? According to Bockelmann, the “single valid characteristic” is ignored.<sup>84</sup>

A summary of the issues under constitutional law affecting non-licensed healthcare professions produces the following:

1. The legal provisions for various healthcare professions “are not based on the activity practiced but only on the title of the profession, laying down certain standards for the licensing and training required to obtain permission to use an occupational title.”<sup>85</sup> The *Kurierfreiheit* system would also seem to apply in this case. The provisions in respect of fundamental professional rights do not refer to the title of a particular occupation, but rather the activity practiced because it is this factor alone which determines whether or not the prerequisites for licensing and practice on the basis of common welfare can be stated.

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<sup>83</sup> Bockelmann, P. 1966, 1146.

<sup>84</sup> Ibid.

<sup>85</sup> Mergen A., 1971, 22.

This differentiation is missing in respect of healthcare professions and, for this reason, an objective and legal classification is urgently required. If this does not take place doubts about the constitutional correctness will continue, “above all, because it must appear questionable whether this is a suitable means of supporting the healthcare system by maintaining and enhancing the professional quality of healthcare personnel.”<sup>86</sup>

The laws regulating professions, whether they apply to nursing, physiotherapy or any other, are related to a single professional title. This cannot prevent the occupation from being taken up and practiced under a different title and subject to different prerequisites, thereby inverting the purpose of the regulation. A qualified profession can only be created through standardized provisions and licensing regulations for the activity itself. Von Olshausen writes: “Looked at from this perspective the laws regulating medical titles are unconstitutional and void because they regulate with ineffectual means. They do not achieve the pursued goals of the common welfare and, therefore, the necessary proof of common welfare fails from the onset.” (cf. Federal Constitutional Court 25, 236, 251 et seq.)<sup>87</sup>

According to von Olshausen, the provisions of the laws regulating the use of professional titles also conflict with Art. 70 et seqq. Basic Constitutional Law, “due to the fact that according to Art. 74 No. 19 of Basic Constitutional Law the Federation only has the authority to regulate the licensing of medical and other healthcare professions and the healthcare trade. As, in this case, the laws do not refer to the licensing of a qualified profession, but only regulate the use of a professional title, it seems questionable whether the Federation is responsible with regard to the aspect of *Annexkompetenz* <sup>88</sup> (as argued by Kilian in *Krankenpflegegesetz* (Nursing Law), Commentary, 1966, p. 30 et seqq.), due to the fact that it had never exercised primary authority, namely the licensing of occupations (cf. Federal Constitutional Court 26, 246, 255 et seqq. *Ingenieurgesetz* (Engineering Law)). Due to the fact that the laws regulating the use of professional titles do not cover the practice of a qualitatively defined professional activity, but virtually promote the evasion

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<sup>86</sup> Ibid.

<sup>87</sup> Ibid, 22-23.

<sup>88</sup> *Annexkompetenz* refers to the division of legislative authority between the Federation and the states in the Federal Republic of Germany [www.lexexakt.de](http://www.lexexakt.de) Dr. jur. C. Loscher, Marburg.

of this, their characterization as a licensing law in the sense of Art. 74 No. 19 of Basic Constitutional Law seems highly questionable and unconstitutional and, for this reason, also dubious.”<sup>89</sup>

2. The original goal of the *Heilpraktikergesetz* was to regulate the practice of medicine by non-medically trained practitioners, to abolish *Kurierfreiheit* and to put alternative medicine in the hands of physicians. It failed to achieve this goal by a wide margin. Under the current constitutional and professional regulations for licensing, anyone who can fulfill the minimum requirement of the legislation for *Heilpraktiker* must be granted entry to the non-medical practice of healthcare. This will continue to apply until the legislation governing health practitioners requires a qualitative prerequisite and certificate of competence. Regulation of this type not only appears to be inappropriate, but also contrary to the principles of equality when compared to the requirements for the study of medicine or osteopathy. Art. 3 para. 1 of Basic Constitutional Law refers to equality under law; the actual situation requires differentiated regulation.

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<sup>89</sup> Mergen A., 1971, 23.

#### **4. Medicine from the Viewpoint of Scholars during the Age of Enlightenment**

Dr. H. S. Glasscheib hits the nail on the head with the title of his book, “The Maze of Medicine, Errors and Triumphs of Alternative Medicine”. Medicine and alternative medicine have made some long detours and even today it is not possible to say that this odyssey has come to an end. Numerous well-known philosophers, politicians and scholars took an early interest in the subject of alternative medicine and the healing powers of nature and added these to academic medicine.

“Excessive overestimation of the healing powers of nature undermined the reputation of the physician and challenged his profession. As the critical awareness of man awakened and recognized the helplessness and narrow boundaries of medical effectiveness, a wave of derision and contempt forced conventional medicine to retreat behind naturopathy.”<sup>90</sup> These and similar attacks against conventional medicine increasingly appeared in the works of comedy writers such as Molière [born Jean-Baptiste Poquelin, (1622-1673)], which severely undermined the prestige of the physicians. With imaginary sick people Molière denied that a physician could heal a disease. ‘Most people die from the medicine and not from the disease.’ was the tone that was generally adopted. Cyrano de Bergerac, Pascal, Boileau and Madame de Sévigné all condemned conventional medicine and, in the age of excessive bloodletting and cathartic medicine, were not entirely wrong. There was a move away from conventional physicians to natural healing.

France’s example was followed. During the Enlightenment in Germany, Kant raised his influential voice against the physicians and in favor of naturopathy. In his last popular paper, *Streit der Fakultäten* (The Contest of Faculties), he answered the question of what a person could and should do in order to partake of the physical enjoyment of life with the statement: ‘Be temperate in consumption and patient in illness and, in particular, rely on the self-help of nature.’ Kant lived according to these views. He never required the

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<sup>90</sup> Glasscheib, 1961, 238 .

assistance of a physician. He had no regard for the art of medicine. In his opinion, ‘physicians were better at describing illness than they were at discovering its cause or finding a cure. The patient was lucky when the physician’s instructions were only dietary and pure, cold water recommended as a remedy and the rest left up to nature.’ (from Kant’s letters).

Schopenhauer (1788-1860) was also in favor of natural healing without intervention by a physician. He opposed homeopathy, just as he opposed allopathy, because they both interfered in the work of nature. In *Lob der natürlichen Lebensweise* (In Praise of a Natural Lifestyle) he described the ‘disgusting consequences of the unnatural consumption of meat, spirituous beverages and tobacco’. This, however, did not prevent him from indulging in these pleasures in the inn *Englischen Hof* one evening after the other. He left the strict observation of his dietary recommendations to Nietzsche.”<sup>91</sup>

The influence of the scholars was great, as we have just seen, but even they had difficulty putting their advice into practice. It appears that in those days double standards were already being applied.

Non-medically trained practitioners, it seems, had a carte blanche to practice, as in society they were supported by the reputed scholars and their thinking and actions endorsed. Academic physicians, on the other hand, were in a difficult position. But defensive action was taken. Diepgen describes the efforts “to make a clear distinction between legitimate health practitioners and charlatans”<sup>92</sup> by means of the Prussian Decree of 1716: “which banned all healers who were not licensed by the state from acting as traveling doctors or surgeons and from selling medications in the markets.”<sup>93</sup> However, these bans on quackery also failed to bear fruit and non-licensed practitioners continued to practice medicine. “It was only at the onset of the 19<sup>th</sup> century that the state introduced regulations making a clear distinction regarding the training and field of activity for medical practitioners of the lower ranks and took decisive action against non-licensed practitioners, however, the

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<sup>91</sup> Glasscheib, 1961, 238-239.

<sup>92</sup> Reupke, 1987, 9

<sup>93</sup> Reupke, 1987, 9

fragmentation into various classes of medical practitioners continued to result in competence being overstepped at the sickbed.

In modern times, the affinity with nature which increasingly developed towards the end of the Middle Ages, paired with the criticism which arose during the Renaissance and humanism, played a decisive role for medicine. Anatomy, physiology and philosophy had a strong influence on the development of medicine.

Rudolf Virchow (1821-1902) was viewed as the founder of today's conventional medicine. His microscopic investigations laid the foundation for cell pathology. "Every physiological dysfunction has a locally defined origin, an anatomically determinable location."<sup>94</sup> This made the humor pathological concept of antiquity obsolete and the teachings of the antiquity became a thing of the past.

The founder of the alternative methods of healing, Samuel Hahnemann (1755 -1843) continued to be rejected by conventional medicine because "one-side, therapeutic and philosophical healing systems were given an all too enthusiastic reception by the physicians as well." Karl Sudhoff described them as "wrong turns and detours along the way to the 'modern development phase' of medicine."<sup>95</sup>

On the other hand, Glasscheib wrote on this subject: "Natural healing, however, does not want to know anything about such interpretations which give the physician too much freedom and the right to intervene. Natural healing wants to let nature take its course without any interference."<sup>96</sup>

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<sup>94</sup> Freder, 2003, 42.

<sup>95</sup> Reupke, 1987, 9

In the archive of Geschichte der Medizin, Vol. VIII, Book 2 and 3, 1914.

<sup>96</sup> Glasscheib, 1961, 236.



## 5. Discussion

Two important points for discussion arise from this chronological review of the history of medicine. One is that complementary medicine represents a significant antipole for conventional medicine which was and continues to be very important for the development and progress of both forms of medicine. Another point is that the legal regulation and the training for each is very different and no longer conforms to current legal and professional standards.

When one considers the development of the first healing treatments it can be seen that the roots of healing lie in nature. Diepgen et al. write that the first healing treatments were empirical and based on the observation of animals. Accordingly, the natural approach to medicine cannot and should not be lost.

The medical practitioners of antiquity chose an approach to medicine which permitted a lot of scope in respect of diagnosis. There is good reason why their understanding of medicine led the way for so many years. Hippocrates and Galen recognized the relationship between function and structure at a very early date and included these in their diagnosis. Both had exceptional mathematical and logical knowledge, in addition to their knowledge of medicine, and they were the first to give medicine its scholarly character.

Initially, this resulted in a very theoretical system, which, however, in application also had a thoroughly practical basis. Hippocrates and Galen always took the whole person into account in their diagnosis.

It was only in 1852 that Virchow (1821-1902) overtook the concept of humor pathology with cell pathology. At this point belief in natural science was the dominant stance among physicians.<sup>97</sup> This makes it clear that it was only in the 19<sup>th</sup> century that scientific medicine achieved such great academic significance. In contrast, naturopathy harkens back to a

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<sup>97</sup> Diepgen, Goerke, 1960, 34.

much older treasury of experience. This is not to underestimate progress, but centuries of experience should be preserved and not fall victim to science.

Tracing the rapid research and development of conventional medicine from bacteriology through hygiene up to the technical boom with x-ray equipment and similar developments in the 19<sup>th</sup> and 20<sup>th</sup> centuries, it is possible to speak of great and resounding successes in scientific medicine. Contrary to the economic aspects of the doctor's practice, it is care and recovery that should be the real focal points of the doctor-patient relationship. The economic aspect is the leitmotif which runs through history from the beginning of the 19<sup>th</sup> century until the present. D. and H.-M. Kratz make clear reference to this problem. "The increasing mechanization and specialization of scientific medicine in big cities led in turn to specialization and sub-specialization among physicians. Patients looking for a 'family doctor' (general practitioner) were no longer able to find one. A close doctor-patient relationship became a thing of the past."<sup>98</sup>

R. Jütte writes about one of the numerous physician meetings which dealt with the problem of combating quackery: "...in 1880, in his analysis of the causes the speaker Aub struck a distinctly self-critical note. He stressed that non-licensed healers had 'a talent for dealing with the rural people', whereas 'the medical practitioners in the clinics often treated patients merely as material and were not trained to act as a medical confidant and advisor'."<sup>99</sup> Today, the health insurance companies and doctors' practices also put priority on the economic aspects. What other explanation is there for the *Regresspflichten*<sup>100</sup> introduced in 1999 for health insurance company physicians who exceed a patient's budget and the *Igelleistungen*<sup>101</sup> charged by physicians. Numerically speaking, nothing has changed in this respect with the health insurance companies or the physicians in the past hundred years.

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<sup>98</sup> Kratz, 2004, 19.

<sup>99</sup> Jütte, 1997, 61.

<sup>100</sup> The health insurance company charges the physician personally for services of patients in the compulsory health insurance system when he has justifiably or unjustifiably exceeded the patient's budget. [www.kvb.de/Gesundheitsreform-Geschichte](http://www.kvb.de/Gesundheitsreform-Geschichte)

<sup>101</sup> Services which the physician charges patients in the compulsory health insurance system privately for because the health insurance company will not cover them although the services were in part included in the catalog of services prior to 1999. [www.kvb.de/Privat-Liquidation/Neuaufgabe20022006](http://www.kvb.de/Privat-Liquidation/Neuaufgabe20022006)

There has also been little change in respect of recognition for natural medicine or the forming of a closer relationship between naturopathy and conventional medicine during this time. The question arises as to whether the real issue is people and maintaining their health or economic profit? Exploring this subject, however, is beyond the scope of this discussion.

The second point in the discussion applies to the legal basis for the *Heilpraktikergesetz* and its use today. If we put our faith in the legal profession then we should be very surprised that laws, such as the *Heilpraktikergesetz* are still in force and have not been adapted to suit the circumstances, or better put, updated.

During the 60s and 70s, Dr. Bockelmann and von Olshausen treated this subject at length.<sup>102</sup> Their conclusion is astounding. The regulations applying to the fundamental rights of a profession do not refer to the name of a particular profession, but rather are targeted at the activity practiced. As a result, the profession of *Heilpraktiker*, which cannot provide evidence of defined standards of training, is put on a par with the study of medicine and above healthcare professions which have clearly defined training standards, such as osteopathy or physiotherapy. Both of these groups have standard training procedures. In this respect the *Heilpraktikergesetz* contravenes the right to equivalence in Art. 3 para. 1 of Basic Constitutional Law. Why the *Heilpraktikergesetz* continues to be applied is a justifiable question. As long as the prerequisites for the licensing of *Heilpraktiker* remain unchanged it is not possible to change the law.

The *Bill-Urteil (judgement)*<sup>103</sup> of the Higher Administrative Court in Cologne on 21.11.2006 is an example of the reformation of the licensing and professional training laws for healthcare professions.

The *Heilpraktikergesetz* appears, therefore, to be sacrosanct in Germany, despite all of the legal reservations. There is clearly a need to maintain a healthy antipole to conventional

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<sup>102</sup> See Chapter 4

<sup>103</sup> See Annex.

medicine. However, from the point of view of legal qualification, in the future there should be an opportunity to practice naturopathic professions not only on the basis of the *Heilpraktikergesetz*, but with a suitable proof of proficiency, professions such as osteopathy should also be recognized as independent professions.

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