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Statutory Regulation of Hypnosis

James T. Brennan*

Direct Statutory Regulation of Hypnosis

Most statutes are passed because of a general public demand or uproar, or because of the militant lobbying of a small interested pressure group, or because regulation of the subject matter is a pet project of some legislator. Hypnotism1 and state

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1 The words Hypnosis, Hypnotism, Mesmerism and Animal Magnetism are used to describe the same phenomenon. Of these words Hypnosis and Hypnotism are the terms most commonly used today, and they are used synonymously.

"Hypnosis comes from the Greek word "hypnos"—sleep. 1. A state resembling normal sleep, differing in being induced by the suggestions and operations of the hypnotizer, with whom the hypnotized subject remains in rapport, responsive to his suggestions. 2. Hence, a similar sleeplike condition." Webster's Collegiate Dictionary (5th ed. 1947).

"Hypnosis 1. An artificially induced state resembling deep sleep, or a trancelike state in which the subject is highly susceptible to suggestion and responds readily to the commands of others: hypnotic state. 2. Somnus: natural sleep (rare).

"Hypnotism 1. Hypnosis: braidism: mesmerism: trance: an induced condition resembling somnambulism, in which the subject is seemingly asleep yet strongly under the influence of suggestion: the subject's attention is intensely concentrated upon the suggested idea, but he is oblivious to all else. 2. The practices involved in the induction of hypnosis.

"Lethargic hypnotism, trance-coma: the deep sleep following major hypnotism.

"Major hypnotism, a state of extreme suggestibility in hypnotism in which the subject is insensible to all outside impressions except the commands or suggestions of the operator.

"Minor hypnotism, an induced state resembling normal sleep in which, however, the subject is obedient to suggestion though not to the extent of catalepsy or somnambulism.

"Somnambulism comes from the Latin "somnus," sleep and "ambulo," to walk about. 1. A sleep disorder in which a person walks, writes, or performs other complex acts automatically while in a condition of somnolence, having no recollection, on awaking, of what he has done. 2. A condition in which one's mental processes are conducted in a more or less unusual or odd way, and in which one seems confused and almost as if asleep.

"Catalepsy comes from the Greek "kata," down and "lepsis," a seizure. A morbid state, allied to autohypnosis or hysteria, in which there is a waxy rigidity of the limbs that may be placed in various positions which they will maintain for a time. The subject is irresponsive to stimuli: the pulse and respiration are slow and the skin is pale."

Stedman, Medical Dictionary (20th ed. 1961)

"Hypnotism is defined to be a name applied to a condition, artificially produced, in which the person hypnotized, apparently asleep, acts in obedience to the will of the operator; . . ." Austin v. Barker, 111 App. Div. 510, 96 N. Y. S. 814 (1906).
REGULATION OF HYPNOSIS

hypnotists caused quite a stir in the first quarter of the Twentieth Century. Several of the existing statutes on hypnosis\(^2\) were passed at that time.\(^3\) Then, for about a quarter of a century, hypnosis was legislatively forgotten. Recently, pressure groups\(^4\) in the form of hypnotic, psychological, psychiatric and medical societies have been lobbying for legislation\(^5\) prohibiting hypnotism by laymen.\(^6\) As the hypnotist vote isn't very large, the activities of these pressure groups have been ignored for the most part.

Statutes on hypnotism generally seek either to regulate stage hypnotism, the hypnosis of minors, or medical use of hypnotism.\(^7\)

Florida

Florida has passed the most recent statute regulating hypnosis.\(^8\) It is a crime in Florida for "any person to engage in the

\(^2\) Statutes regulating hypnosis must be distinguished from statutes like that of California in which Hypnosis or Hypnotism is used only in the pharmacological sense.

"In the pharmacological sense of the word a drug has a hypnotic effect if it can be used in the proper dosage to induce sleep." Encyclopedia of Chemical Technology 771.

\(^3\) Kansas 1903, Nebraska 1911, Wyoming 1913 (repealed 1959), and South Dakota 1919. More recent is Cal. Bus. & Prof. L., § 17821.


\(^6\) Generally no provision is made in statutes regulating hypnotism to permit attorneys to hypnotize their clients or witnesses in order to aid them in collecting facts for trial.

\(^7\) For a general introductory treatment of Hypnotism see, Kaufmann, Suggestion und Hypnose-Vorlesung fur Mediziner, Psychologen und Juristen (1920); Marcuse, Hypnosis Fact and Fiction (1959); Munckwitz, Die Wundermacht des Hypnotismus (5te. Auflage 1921); Schrenk-Notzing, Das angebliche Sittlichkeitsvergehen des Dr. K. an einem hypnotisirten Kinde, Zeitschrift fur Hypnotismus, Band VIII, Heft 4., Strassmann, Lehrbuch der Gerichtlichen Medicin (1895).

\(^8\) § 456.30 Short title. This part II of this chapter shall be known as the hypnosis law. Laws 1961, c. 61-506 § 2.

§ 456.31 Legislative intent. It is recognized that hypnosis has attained a significant place as another technique in the treatment of human injury disease and illness, both mental and physical; that the utilization of hypnotic techniques for therapeutic purposes should be restricted to certain practitioners of the healing arts who are qualified by professional training to fulfill the necessary criteria required for diagnosis and treatment of human illness, disease or injury within the scope of their own particular field of competence; or that such hypnotic techniques should be employed by qualified individuals who work under the direction, supervision or prescription of such practitioners.

It is the intent of the legislature to provide for certain practitioners of

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the healing arts, such as trained and qualified dentists to use hypnosis for hypno-anesthesia or for the allaying of anxiety in relation to dental work; however, under no circumstances shall it be legal or proper for the dentist, or the individual to whom the dentist may refer the patient, to use hypnosis for the treatment of the neurotic difficulties of a patient. The same applied to the optometrist, chiropodist, chiropractor, osteopath or physician of medicine.

It is, therefore, the intent and purpose of part II of this chapter to regulate the practice of hypnosis for therapeutic purposes by providing that such hypnotic techniques shall be used only by certain practitioners of the healing arts within the limits and framework of their own particular field of competence; or by qualified persons to whom a patient may be referred, in which event the referring practitioner of the healing arts shall be responsible, severally or jointly, for any injury or damages resulting to the patient because of either his own incompetence, or the incompetence of the person to whom the patient was referred. Laws 1961, c. 61-506, §1.

§ 456.32 Definitions. In construing part II of this chapter, the words, phrases or terms, unless the context otherwise indicates, shall have the following meanings:

(1) "Hypnosis" shall mean hypnosis, hypnotism, mesmerism, post-hypnotic suggestion, or any similar act or process which produces or is intended to produce in any person any form of induced sleep or trance in which the susceptibility of the person's mind to suggestion or direction is increased or is intended to be increased, where such a condition is used or intended to be used in the treatment of any human ill, disease, injury, or for any other therapeutic purpose.

(2) "Healing arts" shall mean the practice of medicine, surgery, psychiatry, dentistry, osteopathic medicine, chiropractic, naturopathy, chiropody, podiatry and optometry.

(3) "Practitioner of the healing arts" shall mean a person licensed under the laws of this state to practice medicine, surgery, psychiatry, dentistry, osteopathic medicine, chiropractic, naturopathy, chiropody, podiatry or optometry within the scope of his professional training and competence and within the purview of the statutes applicable to his respective profession, and who may refer a patient for treatment by a qualified person, who shall employ hypnotic techniques under the supervision, direction, prescription and responsibility of such referring practitioner.

(4) "Qualified person" shall mean a person deemed by the referring practitioner to be qualified by both professional training and experience to be competent to employ hypnotic technique for therapeutic purposes, under supervision, direction or prescription. Laws 1961, c. 61-506, §3.

§ 456.33 Hypnosis, unlawful to practice. It shall be unlawful for any person to engage in the practice of hypnosis for therapeutic purposes unless such person is a practitioner of one of the healing arts, as herein defined, or acts under the supervision, direction, prescription and responsibility of such a person. Laws 1961, c. 61-506, §4.

§ 456.34 Penalties.

(1) Misdemeanor. Any person who shall violate the provisions of part II of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished as provided by law.

(2) Revocation of license. A violation of any of the provisions of part II of this chapter by any person licensed to practice any branch of the healing arts in this state shall constitute grounds for revocation of license and action may be taken by the respective boards in accordance with the applicable statutes.
practice of hypnosis for therapeutic purposes unless such person is a practitioner of one of the healing arts." For the purposes of the act, the statute defines hypnosis as: (1) an "act or process which (2) produces or is intended to produce in any person (3) any form of induced sleep or trance (4) in which the susceptibility of the person's mind to suggestion or direction (5) is increased or is intended to be increased (6) and where such condition is used or intended to be used in the treatment of any human ill, disease, injury, or for any other therapeutic purpose."

All that is forbidden the layman is the practice of hypnosis for therapeutic purposes. All non-therapeutic uses of hypnosis fall outside the scope of the statute. Since the statute only prohibits a person from engaging in the "practice of hypnosis" for therapeutic purposes, probably more or less continuous employment of hypnosis for a fee would be required before a person would be engaging "in the practice of hypnosis for therapeutic purposes." It is possible, however, that the statute might be interpreted so that a single use of hypnosis for therapeutic purposes would be in violation of the act.

Only a practitioner of one of the healing arts may engage in the practice of hypnosis for therapeutic purposes, and then only within the scope of his professional license. The statute specifically provides that "under no circumstances shall it be legal or proper for the dentist . . . to use hypnosis for the treatment of the neurotic difficulties of a patient" and "the same applies to the optometrist, chiropodist, chiropractor, osteopath or physician of medicine." Employment of the term physician of medicine was unfortunate. Hopefully courts will not include psychiatrists within the prohibition even though they may be licensed physicians of medicine, but in light of this language, it would seem

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(3) Civil liability. Any person who shall be damaged or injured by any practitioner of the healing arts, or by any person to whom such a practitioner may refer a patient for treatment, may bring suit against the practitioner either severally, or jointly, with the person to whom the referral was made.

(4) Construction in relation to other laws. No civil or criminal remedy for any wrongful action shall be excluded or impaired by the provisions of part II of this chapter. Laws 1961, c. 61-506, § 5.

9 In analogy to the interpretation courts have made of similar language in medical licensing statutes. A single treatment standing alone was not in violation of the statute in State v. Wheaton, 130 Conn. 544, 36 A. 2nd. 118 (1944).
that the general practitioner may not employ hypnotism in treating neurotic difficulties. Whether general practitioners are competent to treat "neurotic difficulties" seems a basic question, one which would be better resolved in the statute licensing general practitioners.

The legislature made provision for professional hypnotists to practice under competent supervision by providing that qualified persons may employ hypnotic techniques for therapeutic purposes under supervision, direction, or prescription of a practitioner of the healing arts. Clinical psychologists were omitted from the definition of "healing arts," but as they may treat under medical supervision, this apparent oversight seems harmless.

The Florida statute does not require the practitioner of the healing arts to have competent training and experience in hypnosis before he may treat by hypnotic technique. Most psychiatrists, some dentists, and a few doctors may have received competent training in the induction of hypnosis at a professional school, but it can't be assumed that even all members of these groups are competent to hypnotize patients. Nevertheless, the statute doesn't require the practitioner to send the patient to a qualified hypnotist, but merely provides that the practitioner "may refer a patient for treatment by a qualified person, who shall employ hypnotic techniques under the supervision, direction, prescription and responsibility of such referring practitioner." Referral is permissive, not mandatory. But although the statute does not make it illegal for a practitioner without competent training to hypnotize, it does make it clearer than was the case under prior general tort law that he is responsible for any harm which results from his incompetence.

Violation of the Florida hypnosis law is a misdemeanor, and violators are subject to having their professional licenses revoked. Any person not licensed to practice one of the healing arts and who engages in the practice of hypnosis for therapeutic purposes, would also violate one of the statutes licensing and regulating the practice of the healing arts. The Florida hypnosis law provides specifically that "no civil or criminal remedy for any wrongful action shall be excluded or impaired by the provisions . . . of this chapter."

The real teeth of the statute are contained in the civil liability clause which provides: "any person who shall be damaged or
injured by any practitioner of the healing arts, or by any person to whom such a practitioner may refer a patient for treatment, may bring suit against the practitioner either severally, or jointly, with the person to whom the referral was made.” This provision of the hypnotic law is no more than declaratory of what the result of applying general tort and agency principles to malpractice cases involving hypnosis should be. Nonetheless, because of the ancient requirements of battery, it is not absolutely certain that all courts would, in the absence of such a statutory civil liability provision, in all cases be able to find a basis for liability for injury caused through hypnosis. Hence the statutory liability provided for in the hypnosis law is a helpful supplement to common law tort principles.

Paragraph 3 of § 456.34 makes the practitioner jointly and severally liable with the person to whom he referred his patient for hypnotic treatment for any injury caused by the person to whom he referred the patient. This provision is merely declaratory of normal agency rules, but it makes the practitioner’s liability clear and eliminates any argument about whether or not the hypnotist was an independent contractor. Unfortunately, the language of Paragraph 3 makes no specific mention of hypnosis when it creates the statutory civil liability: “Any person who shall be damaged or injured by any practitioner of the healing arts, or by any person to whom such a practitioner may refer a patient for treatment, may bring suit against the practitioner either severally, or jointly, with the person to whom the referral was made.” As this provision is contained within the hypnosis law, the language should not be construed as creating general statutory civil liability in all malpractice cases. So too, the failure to mention fault in § 456.34 should not be construed as creating absolute liability for hypnotic treatment. The legislative intention section, § 456.31, speaks in terms of fault: “The practitioner of the healing arts shall be responsible, severally or jointly, for any injury or damages resulting to the patient because of either his own incompetence, or the incompetence of the person to whom the patient was referred.” Even without the language of § 456.31, a clearer legislative mandate than the mere omission of any words of fault should be required before a court should construe a statute as creating absolute liability in an area where previously there was liability only for negligent or intentional harm.
Kansas

A Kansas statute makes it a crime for anyone to "induce or permit any child under eighteen . . . to practice or assist or become a subject in giving public open exhibitions . . . of hypnosis."10 The law is designed to protect children from harm by hypnosis. All that is made illegal is the hypnotizing of children at public exhibitions of hypnosis. Public exhibitions of hypnosis may be logically singled out for special regulation. They are merely a form of public entertainment, considered in bad taste by many members of society, and serve no practical or useful function which cannot be served by other forms of entertainment. Public entertainment has been regulated since the settlement of America, while traditionally, there has been less regulation of private entertainment which meets minimum standards of morality. Also public exhibitions of hypnotism attract much notoriety, while hypnosis at private parties does not. Finally, more people are exposed to the real and imaginary dangers of hypnosis by public hypnotic exhibitions than by private hypnotism. Hence, it is logical for a legislature to select public hypnotic exhibitions as an activity to be regulated.

States have passed special legislation to protect children from harm under the assumption that children need greater protection than adults, as they are not always capable of looking out for their own interests because of lack of understanding and wisdom. In order to protect the morals of children, states have legislated as to what entertainment children may witness and participate in.

By making hypnotic exhibitions illegal only to the extent that children under eighteen participate in them, Kansas permits both hypnotizing minors and public exhibitions of hypnotism. Since, however, the major exposure of children under eighteen to hypnotism which might be harmful will be at public exhibitions, the statute seems reasonably sufficient to effectuate its purpose. At the same time, the statute does not severely infringe upon any right the public may have to enjoy the entertainment of its choos-

10 § 38-703 Inducing or permitting child under eighteen to give exhibition of hypnotism, mesmerism or animal magnetism; penalty. That any person or persons who shall within this state induce or permit any child under eighteen years of age to practice or assist or become a subject in giving public, open exhibitions, seances or shows of hypnotism, mesmerism, animal magnetism or so-called psychical forces shall be guilty of a misdemeanor, and on conviction be fined not less than ten dollars nor more than one hundred dollars, or be imprisoned in the county jail not less than ten days nor more than three months, or by both such fine and imprisonment. (L. 1903, ch. 219, § 1; June 1; R. S. 1923, § 38-703.) Kansas Rev. Stat.
REGULATION OF HYPNOSIS

There is no necessity that children participate in public hypnotic exhibitions.

It is a crime for a person to induce or permit a child under eighteen to take an active part in a hypnotic exhibition either as a hypnotist, a hypnotist's assistant or as a hypnotic subject. A good argument can be made for making it a crime to hypnotize a child under eighteen at a public exhibition. The youth may be too young to appraise the possibility that he might be harmed by careless suggestions of the stage hypnotist; and therefore, too young to give his consent. It likewise seems desirable to protect the public from child hypnotists, who, too young to know fully the effect of their suggestions, might cause their subjects serious harm. One wonders, however, what public policy is served by prohibiting children from assisting a hypnotist. If children should not be present at hypnotic exhibitions because their young minds should be shielded from undesirable ideas which might be stimulated by seeing a hypnotic exhibition, then they should not be allowed to be present at a hypnotic exhibition at all; if they may sit in the audience, why may they not stand on the stage? In all likelihood children may not assist in hypnotic exhibitions because the draftsmen of the statute regarded hypnotic exhibitions as morally tainted; and therefore, children should not be allowed to take an active part in them. Nor does there appear to be any contrary forceful reason for permitting children to assist at hypnotic exhibitions.

The Kansas statute is aimed at hypnotists, promoters, parents, and guardians. The participation of a child is a crime for them, but not for the child. As the statute is purely criminal, no civil liability arises directly from it. Any recovery for harm done to a child illegally hypnotized, or for that matter to an adult legally hypnotized, must be on general tort liability principles.

The minimum fine for violating the section does not seem excessive, but the maximum of three months in jail and one hundred dollars fine seems rather severe.

Nebraska

The Nebraska statute reads as though the legislature used the earlier Kansas statute as a drafting form. Several important changes were made in the Kansas statute, however, when it was

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11 § 28-1111. Hypnotic seances, practices and exhibitions, prohibited; penalty. Whoever shall hereafter take part in, practice, assist or become a sub-

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passed in Nebraska. Nebraska made all public exhibitions of hypnosis illegal: "Whoever shall hereafter take part in, practice, assist or become a subject in giving a public, open exhibition . . . of hypnotism . . . for gain shall be deemed guilty of a misde-meanor." There are two possible reasons for making public exhibitions of hypnosis illegal: one is censorship of entertainment, enforcing a certain standard of taste upon the community, the other is protection of the public from harm caused by stage hypnotism. Modern social values approve of legislation designed to protect the public from injury and harm, but legislation setting a standard of taste to be forced upon the public is dangerous to the basic principles of a free, democratic society. It seems that more proof of actual harm to subjects of hypnotic exhibitions should be produced before legislative prohibition of hypnotic shows can be justified. Conceding for the sake of argument that perhaps a few persons have suffered harm from suggestions they received while subjects in a public exhibition of hypnotism, it is still to be asked whether the danger of harm is sufficient to warrant state interference with the public's right to enjoy the entertainment of its choosing. Football, boxing, skiing, auto racing, and many other public amusements, likewise involve risks. The social utility of auto racing is at least as marginal as that of hypnotic demonstrations. Probably the reason for legislation against public hypnotic shows stems from a feeling on the part of certain classes in society that such entertainment is in poor taste, disgusting and shouldn't be permitted. The answer, of course, is that people who feel this way about hypnotic exhibitions don't have to attend them, just as people opposed to alcohol, don't have to drink, and opponents of gambling don't have to go to the race track.

The Nebraska statute makes it a crime to take an active part in any open public exhibition of hypnotism for gain. A completely free public exhibition would not break the law, but the probabili-

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pect in giving a public, open exhibition or seance or show of hypnotism, mesmerism, animal magnetism or so-called psychical forces for gain shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than ten dollars nor more than one hundred dollars, or be imprisoned in the county jail not less than ten nor more than thirty days.


ties of such an occurrence are relatively slight. The major problem in interpreting the statute is determining what the phrase "for gain" modifies; and hence, who falls within the statute. "Whoever shall hereafter take part in, practice, assist or become a subject in giving a public, open exhibition or seance or show of hypnotism, mesmerism, animal magnetism or so-called physical forces for gain (italics mine) shall be deemed guilty of a misdemeanor . . ." If "for gain" modifies the "exhibition" or "show," then everyone who takes an active part in the exhibition which is "for gain" falls within the statute; if however, "for gain" modifies "whoever," then only those active participants in the exhibition who take part for gain are included in its coverage. Under the first construction volunteer subjects would violate the statute, while under the latter construction only the hypnotist and his assistants would run afoul of its provisions. Since the legislature could easily have said "whoever shall hereafter for gain," it would seem that everyone participating in the illegal exhibition of hypnotism would violate the statute. But a court might reach the contrary result that only those who profit from the illegal exhibition should be held to fall within the statute on the grounds that an ambiguous criminal statute should be construed narrowly.

The maximum penalty is not as severe as in Kansas. Nebraska makes13 the maximum jail term thirty days, which seems reasonably appropriate.

Oregon

Oregon, like Nebraska, has made public hypnotic exhibitions illegal.14 The major difference between the statutes of the two states is that the Oregon statute makes any public exhibition of a

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13 This statute has never been construed in a case involving hypnotism, nor for that matter, have any of the other state statutes on hypnosis ever been cited or construed in such a case. The only case arising under this section is Dill v. Hamilton, 137 Neb. 723, 291 N. W. 62 (1940), which involved a religious seance cult.

14 Miscellaneous Crimes against Morality and Decency. § 167.705. Exhibiting persons in trance. Any person who in any manner exposes to public view any person in a state of trance, sleep or entire or partial unconsciousness, which was induced by hypnotism, mesmerism, or any other form of the exertion of the will power or suggestion of another person over such subject, or consents to or aids or abets such exhibition either in person or through his agents, servants or otherwise, or hypnotizes any person for the purpose of being so exposed to view; shall be punished upon conviction by a fine of not more than $1,000. (Amended by 1959, c. 530, § 6) Oregon Rev. Stat.
hypnotized person illegal, whether such exhibition is for gain or not. The hypnotized person must be exposed "to public view" for the statute to be violated, but how large or open must the view be for the exhibition of the hypnotized person to be "public"? It would seem that hypnotism at private parties should fall outside the statute, but a large open party might well meet the requirement of a public view. Although in a sense demonstrations for psychiatrists, dentists, medical students, etc., may be public, common sense would lead one to hope that the statute would not be applied to such groups.

Any manner of exposure is sufficient to violate the statute. It does not have to be at a public exhibition or gathering. Apparently the draftsmen of the statute had television in mind. If the statute should be applied to an exhibition of a hypnotized person on television, very difficult questions would arise as to the authority of Oregon to make criminal shows permitted by the FCC, and particularly, if the TV broadcast emanated from outside Oregon.

The statute applies to everyone who has anything to do with the exhibition of a hypnotized person. And the fine is modern—one thousand dollar maximum, but there is no jail penalty for violation of the statute.

South Dakota

As there is danger that minors may not be fully aware of the dangers to which they may be exposing themselves by becoming hypnotic subjects, South Dakota\textsuperscript{15} makes it unlawful to hypnotize a minor without first obtaining consent in writing from the parent or guardian of the minor. It does not matter where the hypnotizing is done, be it in public or in private. However, this section does not apply to hypnosis of a minor by a licensed physician who regularly employs psychotherapy in his practice. Such a physician is excluded since there seems little danger of his incompetence, and at the same time, the consent of the parent may be implied from the parent’s permitting the minor to consult such a physician. The omission of clinical psychologists and

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\textsuperscript{15} § 13.3501 Hypnotism of minors, unlawful: exceptions. It shall be unlawful for any person to place any minor under the influence of hypnotism or mesmerism in this state, without first obtaining consent in writing from the parent or guardian of such minor; provided that this prohibition shall not apply to any physician duly licensed to practice his profession in this state, who regularly employs psychotherapy in his practice. Source: § 4120, Rev. Code 1919. South Dakota Rev. Code (Ch. 13.35 Hypnotism).
dentists from this exclusion does not seem serious because all they have to do is obtain written consent from the parent before employing hypnosis. This section should effectively eliminate undesirable, non-medical hypnosis of minors. It seems unlikely that parents will give prior written consent to party, stage hypnotists and the like.

Another section of the South Dakota statute\(^\text{10}\) makes it unlawful for anyone to publicly exhibit any person under the influence of hypnotism. "It shall be unlawful for any person to publicly exhibit any person under the influence of hypnotism . . . , or to place such hypnotized person in any show window, room, or building, where such hypnotized person may be seen by passers-by, . . . or is accessible to the public." The statute was obviously drafted to prohibit the exhibition of persons while in a hypnotic trance, for example, the exposure of a hypnotized person in a store window sitting on a saw-horse and peddling as though he were riding a bicycle. It is possible to argue that such exhibitions are all that the statute covers. Since "to publicly exhibit" read in context is quite vague, it is natural to read on to discover what the statute prohibits, and therefore, the argument that the statute only prohibits exhibitions in show windows, etc. The trouble with this reading of the statute is that it holds the words "to publicly exhibit" meaningless and ignores the "Comma" and "Or" separating the first and second clauses. "To publicly exhibit" should prohibit public exhibitions of hypnosis in which by definition hypnotized persons are publicly exhibited. The same result may be reached under the second clause which makes it illegal "to place such hypnotized person in any . . . room or building . . . where such room or building is open or accessible to the public."

The statute makes it unlawful to exhibit publicly any person under the influence of hypnosis. Is a public exhibition of a person performing a post-hypnotic suggestion, a public exhibition of a person "under the influence of hypnosis" within the meaning of the South Dakota statute? Certainly a person performing a post-hypnotic suggestion would in fact be acting under the

\[^{10}\] § 13.3502 Unlawful exhibition of hypnotism. It shall be unlawful for any person to publicly exhibit any person under the influence of hypnotism or mesmerism in this state, or to place such hypnotized person in any show window, room, or building, where such hypnotized or mesmerized person may be seen by passers-by, or where such room or building is open or accessible to the public. Source: § 4121 Rev. Code 1919. South Dakota Rev. Code.
influence of hypnotism. What policy reason makes illegal the public exhibition of a person performing a post-hypnotic suggestion? On the other hand, the phrase "such hypnotized person" is used twice, and in the normal use of language would mean a person presently in a state of hypnotic trance. True "Hypnotized" is grammatically a past participle and could mean a person who had been in a state of hypnotic trance and no longer is; but if this were what were meant, it might easily have been expressed in more appropriate language. And construing a criminal statute strictly against the state, some courts might find the statute violated only where the person exhibited was in a state of hypnotic trance while being exhibited.

Violations of the South Dakota statute are punishable by fine only. The minimum fine of one hundred dollars is somewhat steep, but the maximum fine of two hundred dollars is reasonably appropriate to the violation.17

Tennessee

Tennessee does not prohibit hypnotism. It merely taxes hypnotists $250.00 per annum.18 Clearly, the intent of the legislature was not to raise tax money, but to discourage hypnotists. A fee of $250.00 per year should not discourage a stage hypnotist in a large city, or a side show hypnotist making a tour of the state, but the one stand small town hypnotist is likely to pass Tennessee by as unprofitable. The statute does not define the word hypnotist. Who is a hypnotist? In the statute hypnotists are placed in the same category with fortune tellers, clairvoyants, palmists, etc. This would raise doubts whether the tax should apply to psychiatrists, dentists, and clinical psychologists who use hypnotism in conjunction with their professional practice. If this were a true taxing statute designed to raise revenue, there would be no doubt that the medical hypnotists would have to pay the tax; but as the tax seems primarily designed to discourage the activities of certain persons of questionable integrity, the tax

17 § 13.3503 Punishment for hypnotism or exhibition of. Whoever shall violate any provision of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars nor more than two hundred dollars. Source: § 4122 Rev. Code 1919. South Dakota Rev. Code.

might be found inapplicable to medical practitioners using hypnosis in their practice.

Since the tax is a privilege tax, it would seem that either continuous activity as a hypnotist or open use of hypnotism for profit should be required before anyone would be a hypnotist within the meaning of the statute. One-occasion party hypnotists should not be subject to the tax, but possibly more or less continued activity as a hypnotist even at private parties without compensation might make a person liable to pay the tax. Unfortunately, the statute is laconic in the extreme. The Tennessee law on hypnotism will be written by the courts, if they are called upon to interpret the statute.

Virginia

Virginia outlawed all hypnotism except that performed by a licensed physician or surgeon, or at his request, in the practice of his profession. States have the power to outlaw a great many activities, whether it is desirable for the state to exercise this power is another matter. Licensed physicians and surgeons are excepted from the statute, as is the case in Florida without regard to the individual competence of the practitioner as a hypnotist, and in Virginia without making clear the tort liability of physicians and surgeons for injury to patients caused by hypnotic treatment. The statute limits the exception to physicians and surgeons. It is not at all clear that the term surgeon would be interpreted to include dentists, who, next to psychiatrists, are the professional medical practitioners who make the greatest use of hypnosis in the practice of their profession. Since the purpose of the exception is to permit legitimate medical use of hypnosis, for the exception to apply, the licensed physician must be employing hypnosis in the practice of his profession, that is, even a licensed medical doctor would be committing a crime if he hypnotized a person at a private party or at a public exhibition of hypnotism. It would seem that the purpose of the statute would be better served by making the exception apply to all practitioners of a healing art as is the case in Florida.

19 § 18.1-414 Hypnotism and mesmerism. If any person shall hypnotize or mesmerize or attempt to hypnotize or mesmerize any person, he shall be guilty of a misdemeanor. But this section shall not apply to hypnotism or mesmerism performed by a licensed physician or surgeon, or at his request, in the practice of his profession. (Code 1950, § 18-348; 1960 c. 358.)

For provision as to misdemeanors when no punishment is specified, see § 18.1-9. Virginia Rev. Code.
The maximum penalty for violation of the statute is a five hundred dollar fine and twelve months in jail, which seems out of all proportion to the seriousness of the offense. On the other hand, there probably aren't many hypnotists in Virginia, just as there weren't many people who broke into the Turkish Sultan's harem.

**Wyoming**

Formerly, Wyoming was not a recommended place to hypnotize minors. Hypnotizing a minor in public or for purposes of exhibiting a minor in public was a felony punishable by five years in the state penitentiary. It was not clear from the language whether actual knowledge or reasonable cause to know or to suspect that the person was under twenty-one was required. Another section made it a misdemeanor to hypnotize a minor for any purpose other than displaying him at a public exhibition, but did not apply to persons hypnotizing a minor for the purpose of medical or surgical treatment with the prior consent of the parent or guardian.

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20 § 18.1-9 How misdemeanors punished.—A Misdemeanor for which no punishment or no maximum punishment is prescribed by statute shall be punished by a fine not exceeding five hundred dollars or confinement in jail not exceeding twelve months, or both, in the discretion of the jury or of the court trying the case without a jury. (Code 1950, § 19-265; 1960, c. 358) Virginia Rev. Code.

21 § 14-8. Hypnotizing or mesmerizing minors for exhibition purposes.—Any person who shall hypnotize or mesmerize any person under the age of twenty-one years in any public exhibition, show or play, or for the purpose of displaying such hypnotized or mesmerized person at any public exhibition, show or play, shall be guilty of a felony and upon conviction thereof shall be imprisoned in the penitentiary not less than one year and not more than five years.

(Laws 1913, ch. 87, § 1; C. S. 1920, § 7262; R. S. 1931, § 32-809; C. S. 1945, § 58-116.) (Repealed 1959.)

See also, § 14-24, Child Protection Act—Other acts injurious to health, morals, etc. Wyoming Rev. Stat.

22 § 14-9 Hypnotizing or mesmerising minor for other than exhibition purposes.—Any person who shall hypnotize or mesmerize any person under the age of twenty-one years for any purpose other than for the purpose of displaying such hypnotized or mesmerized person at any public exhibition, show or play, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than fifty dollars and not more than six months; provided that this section shall not apply to persons hypnotizing or mesmerizing any person for the purposes of medical or surgical treatment with the consent of the parent or guardian of such person so hypnotized or mesmerized.

Wyoming has repealed its statutes on hypnotism, and has thereby made the legislative decision that it has no need for special statutes regulating hypnosis. The legislature must have felt that Wyoming children are sufficiently protected from harm by other laws. The sections on hypnotism § 14-8 and § 14-9 were passed in 1913 and not repealed until 1959. During the forty-seven calendar years they were on the books, these sections were never cited or construed. This together with the fact that over forty states and territories have never felt any need for special statutes on hypnotism, demonstrates that there is no need for special statutes regulating hypnosis.

Indirect Statutory Regulation of Hypnosis

Hypnotism as the Practice of Medicine

The states which do not have specific statutes regulating hypnotism, do have statutes which limit what a hypnotist may do. As an example of a state which does not mention hypnosis in her statutes, I have selected Connecticut. In this chapter I shall point out some of the many Connecticut statutes which control the activities of hypnotists within her borders.

The first thing hypnotists shouldn't be permitted to do is to treat people medically. § 20-1 defines the healing arts. § 20-9 defines the practice of medicine and declares who may practice medicine in the state. "No person shall, for compensation, gain or reward, received or expected, diagnose, treat, operate for or prescribe for any injury, deformity, ailment or disease, actual or imaginary, of another person, nor practice surgery, until he has obtained such a certificate of registration as is provided for in § 20-10, and then only in the kind or branch of practice stated in such certificate; but the provisions of this chapter shall not apply to dentists . . ., nor to any Christian Science practitioner . . ., nor to any person licensed to practice any of the healing arts named in § 20-1, who does not use or prescribe in his practice

23 Although no cases arose under the sections, they may have had the practical effect of eliminating or greatly reducing hypnotism of minors within the state.

24 For no particular reason other than I come from Connecticut.


26 Id., § 20.9.
any drugs, medicines, poisons, chemicals, nostrums or surgery. . . .” 27

A hypnotist might treat people without violating § 20-9 if he didn’t charge for his services. 28 Hence, occasional gratuitous treatment of a friend may contravene the statute; but as few people make a practice of treating people by hypnotism without compensation, the loophole is not very important. Any dentist, chiropractor or other licensed member of any of the healing arts would risk loss of his license if he should gratuitously toss in a little hypnotic psychotherapy along with his regular services, and he would violate § 20-9 if he collected in a case where he had used hypnosis for medical treatment outside the scope of his license. The argument that the practitioner of the healing arts did not violate § 20-9 by treating with hypnosis because he did not use any drugs, medicines, poisons, chemicals or nostrums 29 would probably not appeal to a Connecticut court. 30

It would seem that § 20-9 is violated whenever any attempt is made to help a patient because of the “diagnose, treat.” 31

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28 For an attack upon making the collection of a fee the basis for determining whether a person has violated a statute by practicing medicine without a license, see Ross, Metaphysical Treatment of Disease as the Practice of Medicine, 24 Yale L. R. 39 (1915).

29 “It is conceivable that one may practice medicine to some extent . . . without dealing out or prescribing drugs or other substances to be used as medicine.” Commonwealth v. Jewelle, 199 Mass. 558, 85 N. E. 858 (1908).

30 One who attempted to heal diseases by mental suggestion, using medicines, and not attempting to treat cases requiring surgical assistance, was required by the Code of 1907 § 1626 to obtain a certificate of qualification from the state board of medical examiners, State v. Smith, 8 Ala. App. 352, affirmed 183 Ala. 116, 63 So. 70 (1913). In Parks v. State, supra, n. 27, the defendant was a magnetic healer who advertised himself as such, and styled himself “Professor.” He was not a graduate of any medical school, and had no license. He had practiced magnetic healing (an older term for hypnosis) for several years, he diagnosed cases entirely by the nerves. On a certain day a patient came to him to be treated for a lame ankle. He diagnosed the case as rheumatism, and gave treatment which consisted of rubbing the affected parts. He charged and was paid $1 for the treatment. He was convicted.

On appeal the court said, “It is our conclusion that appellant was engaged in the practice of medicine, since he held himself out as a magnetic healer, and his method of treatment was, at least in part, the method that medical practitioners sometimes employ.”

31 “Broadly speaking, one is practicing medicine when he visits his patient, (Continued on next page)
language of the section. A mental determination of what is wrong with the patient is a necessary step before any treatment by hypnosis may be undertaken, and this mental determination would seem to be a diagnosis within the meaning of § 20-9. Any positive act to alleviate the "injury, deformity, ailment or disease" would be treatment within § 20-9. Diagnosing and treating a complaint falls within § 20-9 whether the ailment is "actual or imaginary." This language covers particularly well the mental-physical-emotional cases which a hypnotist might attempt to treat.

Hypnotists as such are not excluded from § 20-9 unless they would otherwise be excluded from its provisions. Hypnotists as such are not excluded from § 20-9 unless they would otherwise be excluded from its provisions.\textsuperscript{32} A licensed practitioner of one of the healing arts may use hypnosis within his own professional field; however, the activities of all practitioners of healing arts are regulated.

Should a Connecticut court find therapeutic use of hypnosis not the practice of medicine within the meaning of § 20-9, it might still find that the use of hypnosis for therapeutic purposes was the practice of natureopathy.\textsuperscript{33} Hypnotism might well be considered falling within: "The psychological sciences, such as psychotherapy," particularly in view of the apparent attempt of the legislature to include all professions in any way connected with the healing arts within the term natureopathy, other than those professions covered by separate sections of Title 20, in order to provide for their regulation for the protection of the public.

Many hypnotists could not meet the licensing requirements

(Continued from preceding page)

examines him, investigates the source of disorder, determines the nature of the disease, and prescribes the remedies he deems appropriate." State v. Smith, 233 Mo. 242, 135 S. W. 465 (1911).


\textsuperscript{33} Sec. 20-34. Practice defined. The practice of natureopathy shall mean the practice of the psychological, mechanical and material sciences of healing as follows: The psychological sciences, such as psychotherapy; the mechanical sciences, such as mechanotherapy, articular manipulation, corrective and orthopedic gymnastics, neurotherapy, physiotherapy, hydrotherapy, electrotherapy, thermotherapy, phototherapy, chromotherapy, vibrotherapy, concussion and pneumatherapy, and the material sciences, such as dietetics, and external applications; but shall not mean internal medication or the administering of any substance simulating medicine or the form of medicine, except dehydrated foods. (1949 Rev., S. 4394) Conn. Rev. Stat. ch. 373 (1958).

To engage in natureopathy one must hold oneself out as a natureopath either by a series of acts or by advertising as such. State v. Wheaton, 130 Conn. 544, 36 A. 2d 118 (1944).
for natureopaths.\textsuperscript{34} § 20-42 provides the penalty for the unlicensed practice or attempt to practice natureopathy or for using any word or title to induce the belief that the person is engaged in the practice of natureopathy.\textsuperscript{35} Merely calling oneself a hypnotist should not violate the section without further evidence that by the manner in which he used the title "hypnotist," the individual had held himself out to the public as someone who could effect cures. It would seem that a hypnotist who holds himself out as being able to effect cures should be considered a natureopath and should fall within Chapter 373 regulating the practice of natureopathy.

Chapter 383 of Title 20 regulates the practice of psychology. A court might under certain circumstances consider a hypnotist practicing psychology. The qualifications for a certificate to practice as a psychologist are particularly stringent and few hypnotists would meet them.\textsuperscript{36} But in order to violate Chapter 383, the hypnotist would have to represent himself as a psychologist,\textsuperscript{37} and whether his activities as a hypnotist alone would be considered such a representation is arguable. If the hypnotist were to use any of the words "Psychologist, Psychological" or "Psychology" in his billing, he would clearly violate Chapter 383.

§ 20-194 states the truism that the grant of a certificate to a psychologist does not give him the right to practice medicine\textsuperscript{38} as defined in 20-9. There is no similar section in Chapter 373 on Natureopathy, but clearly a natureopath may not practice medicine either. Whether a natureopath's treatment of a patient has exceeded the bounds of his license would be in the final analysis a jury question,\textsuperscript{39} and with their popular image hypnotists should not plan to win a great number of jury verdicts.

A hypnotist engaged in borderline practice of the healing arts might well violate § 53-341 by advertising or using the title

\begin{footnotesize}

\textsuperscript{35} A single treatment, standing alone, does not violate Chapter 373, but continued treatments should. State v. Wheaton, 130 Conn. 544, 36 A. 2nd. 118 (1944).


\textsuperscript{37} Id. § 20-193 (1958).

\textsuperscript{38} Id. § 20-194. Right to practice medicine not granted. Nothing in this chapter shall be construed to grant to certified psychologists the right to practice medicine as defined in section 20-9. (1957, P. A. 269, S. 7.) Conn. Rev. Stat. (1958).

\end{footnotesize}
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“doctor.” It would seem that quacks and frauds using hypnosis to effect cures and to treat people would be very likely to violate this section.

Protection of the Young

In addition to protecting the public from hypnotists practicing medicine, many people believe that children should be shielded from possible harm by hypnotists.

§ 53-21 makes it a crime for any person to cause or permit any child under sixteen to be placed in a situation in which its health is likely to be injured or its morals are likely to be impaired or for any person to do any act likely to impair the health or morals of any such child. Merely hypnotizing a child should not violate this section, but suggestions which might do harm to the child’s physical, mental, or moral health would. A problem, of course, is how probable must the harm to the child be? It would seem that any suggestion which might harm a child in a state of hypnotic trance would violate the statute. Since there is no necessity for hypnotizing children at stage demonstrations of hypnotism or at parties, not much danger of harm should be required for a jury or judge to convict a hypnotist for violating § 53-21. It goes without saying that any immoral or improper suggestion is criminal under this section.

41 In discussing hypnotism and the law Prof. Cavus said: “Nor do I mean to have laws passed to enforce protection against malpractice. I trust that our present laws will suffice to protect the ignorant against psychical quackery as far as protection is advisable. No new laws are needed—supposing that the judges are competent men who understand how to make the proper application of those laws to prohibit nuisance of a similar kind.” 8 Medico-Legal J. 335 (1891).
42 Injury or risk of injury to children. Any person who wilfully or unlawfully causes or permits any child under the age of sixteen years to be placed in such a situation that its life or limb is endangered, or its health is likely to be injured, or its morals likely to be impaired, or does any act likely to impair the health or morals of any such child, shall be fined not more than five hundred dollars or imprisoned not more than ten years or both. (1949 Rev., S. 8369.) Conn. Rev. Stat. (1958). See also Conn. Rev. Stat. § 53-25 (1958).
43 State v. Dennis, 24 Conn. L. J. No. 13, p. 3 (1963) and cases cited therein. See also Wright, Connecticut Jury Instructions, § 692 (1960).
44 But possibly to the contrary is 20 Op. Atty. Gen. 297 (Nov. 9, 1937) Conn. Gen. St. 1930, § 6064, barred minors under sixteen years of age from acting in theatrical performances, regardless of whether such performances were professional or amateur in nature or whether they were for benefit purposes.
§ 53-342 makes it a misdemeanor for any person owning or managing any dance house, concert saloon or phonograph hall or any museum having entertainments or variety shows connected therewith to allow a child under fourteen, unaccompanied by a parent, to frequent the place at any time; and after six p.m. the same applies to the owners and managers of theaters and motion picture showing places. The first provision of § 53-342 probably wouldn't be applied to a hypnotic exhibition, although a court might well find that wherever the hypnotic exhibition is given in a museum having entertainments or variety shows within the meaning of § 53-342, taking judicial notice of the fact that Barnum's Great American Museum is an institution of the past, and if the statute is to have any meaning, it must be adapted to modern circumstances. But as this is a criminal statute and the language seems unlikely to place theater and circus managers on notice that it is a crime to permit an unaccompanied child to view a hypnotic exhibition in the afternoon, it probably shouldn't be applied to such a hypnotic exhibition. Of course, a manager who did not keep young children out of a public exhibition of hypnosis in the afternoon might be asking for trouble with the police and public authorities. The second provision of § 53-342 clearly is applicable to theaters and movie houses after 6 p.m. and hence to most, if not all hypnotic exhibitions, as a court might interpret any place where a hypnotic exhibition was held as being a theater within the meaning of the statute. To allow a child under fourteen to view such an exhibition unaccompanied by its parent would violate § 53-342. Connecticut leaves the child's welfare up to the parent, provided of course that § 53-21 is not violated.

Connecticut thus does not forbid hypnotizing minors or minors viewing hypnotic exhibitions unless there is likelihood

46 Attendance of children at places of amusement. Any person owning, keeping or managing, wholly or in part, any dance house, concert saloon or phonograph hall or any museum having entertainments or variety shows connected therewith, who allows, at any time, any child under the age of fourteen years to be admitted to or remain in such place, unless such child is accompanied by his or her parent or guardian or some adult person authorized by such parent or guardian to attend such child, shall be fined not more than fifty dollars. Any person owning, keeping or managing, wholly or in part, any roller skating rink, any theater or any moving picture show place, who allows, after six o'clock in the afternoon of any day, any child under the age of fourteen to be admitted to or remain in such place, unless such child is accompanied by his or her parent or guardian or some adult person authorized by such parent or guardian to attend such child, shall be fined not more than fifty dollars. (1949 Rev., S. 8677.) Conn. Rev. Stat. (1958).
that harm to the minor will result. If a probability of harm can be demonstrated, then Connecticut law is violated. If no harm can be shown, why should it be illegal for children to be hypnotized or to view hypnotic exhibitions?

I fail to perceive any harm which may come to children from observing hypnotic performances. It seems relatively clear that the fact of hypnosis will become known to a child at some time either through conversation, movies, comic strips\textsuperscript{47} or reading. The half knowledge a child may acquire about hypnosis may stir its imagination in a somewhat unhealthy manner, but this stirring of the imagination is inherent in a lay person's knowledge of the existence of the phenomenon of hypnosis. A stage exhibition of hypnosis may or may not prove to be a stronger stimulant to the unchecked imagination of a child. Much may be said for the practical effect of § 53-342 which is that in a great majority of instances the child will be accompanied by its parent when it views a hypnotic demonstration. No matter how limited the parent's own understanding of hypnosis, the parent is likely to clear up at least some of the child's gross misconceptions of hypnotism, thus keeping the child's imagination in greater check than would be the case if the child had first learned of hypnosis from some other source.

One thing society clearly does not want is young children learning the technique of inducing hypnosis. Since no performer could afford to chance hypnotizing a person in front of an audience for the first time by the normal induction technique,\textsuperscript{48} the stage hypnotist will rely on previously hypnotized, conditioned subjects or on the carotid artery technique.\textsuperscript{49} A child would not succeed in hypnotizing his playmates by the simple commands a hypnotist would use on a preconditioned hypnotic subject; and likewise from observation alone, a child, or an adult for that matter, would not learn how to hypnotize by the carotid tech-

\textsuperscript{47} At the moment hypnotism seems to be the rage in comic strips.

\textsuperscript{48} The length of time it takes to hypnotize a person depends upon the technique employed and the frequency with which the person has been hypnotized in the past. Using the normal technique even a susceptible person may not be hypnotizable for several hours of attempted induction time. Marcuse, Hypnosis Fact and Fiction (1959).

\textsuperscript{49} This method blocks the flow of blood containing oxygen to the brain. It may be harmful whenever a subject is old or has any anatomical defects in the secondary arteries which lead to the brain. And the back-up of blood in the main arteries leading from the heart may cause harm whenever the subject has a poor heart. Opinion: Dr. Lawrence Chiaramonte, Baltimore City Hospital.
nique. Hence, there seems no danger that a child would learn how to hypnotize from observing a hypnotic exhibition.

To some, control over who may learn how to induce hypnosis regardless of age may seem desirable, but control of learning is a difficult and undesirable thing in a free society. Although some federal legislative control over the advertising of hypnotic aids in pulp magazines, and the shipping of such aids in interstate commerce and through the mails might at first glance seem a good idea, the previous chapter should demonstrate that wise and well considered regulation of hypnotism is not likely to result from our legislative process; and permitting the federal government to determine what any person may learn seems a dangerous precedent, particularly in view of the fact that there is little if any evidence that even criminals and quacks are causing the public harm by hypnotism.\(^50\)

### Public Exhibitions of Hypnotism

The banning of public exhibitions of hypnosis is frequently espoused by various groups. My personal feelings are that such action is undesirable. Assuming that some citizens of a Connecticut town do not wish to permit a public exhibition of hypnotism, what weapons are at their command? The most effective non-criminal sanction would, of course, be to convince the local citizenry not to go to the show. The financial failure of a hypnotic exhibition would be a most effective sanction against a hypnotist and his promoter and would effectively discourage such shows in the future. Where the public does not want hypnotic entertainment, there is no need to worry about a hypnotist forcing himself upon the community. Most groups of the Women's Improvement League variety, however, would be very unlikely to rely

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upon the good common sense and taste of the citizenry. They would probably attempt to stop a hypnotic exhibition by a combination of pressure on the mayor, aldermen, police and fire departments as well as the local promoter and owner of the property where the show was to be held.

§ 21-6 grants the mayor or selectman and his council the right to license and regulate any exhibition within the community. They may refuse to grant a license for a hypnotic exhibition. While the hypnotist or his promoter has the right to bring an action in the nature of mandamus against the mayor or selectman and his council for the issuance of a license, the overwhelming financial success of the exhibition would have to be assured before it would be profitable for either the promoter or hypnotist to do so. It takes at least a couple of years to fight a case through the Supreme Court of Errors, and not many promoters would be willing to wait so long. And then it is always quite possible that the mayor and town counsel may have thought up sufficient legal grounds for refusing to grant the permit.

The fire marshal has a great deal of arbitrary power. Most public buildings and places of assembly would have difficulty passing a rigorous fire inspection which the fire marshal didn’t intend them to pass.

Thus local officials have a great amount of discretionary power to entirely exclude public exhibitions of hypnosis from their community or they may permit such shows under conditions which amount to an exercise of control over their content.

Chapter 532 gives the Commissioner of the state police control over public amusement parks and places of exhibition. After the big circus fire a statute was passed requiring a non-resident to appoint the secretary of state his agent for service of process before a license may be issued for an amusement as

52 Id. § 29-53 (1958).
53 Id. ch. 532, § 29-129, § 29-140 (1958).
54 29-138. Secretary of state to be attorney of nonresident owners of amusements. No license shall be issued under the provisions of section 29-137 to any owner not a resident of this state until such owner has appointed, in writing, the secretary of the state and his successors in office to be his attorney, upon whom all process in any action or proceeding against him may be served; and in such writing such owner shall agree that any process against him which is served on said secretary shall be of the same legal force and validity as if served on the owner, and that such appointment shall continue in force as long as any liability remains outstanding against

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defined in Chapter 532. However, this provision would not apply even to all out-of-state hypnotists. The provision for service of process combined with another section requiring proof of financial responsibility before a permit may be issued, very adequately protect the tort rights of an injured party against out-of-state entertainers. This is an area in which truly constructive statutes may be passed. Expanding the scope of statutes permitting service of process upon the secretary of state in the case of non-residents and requiring proof of financial responsibility before issuing permits for activities which might cause injury or harm would go a long way toward improving the effectiveness of tort law. Such statutes wouldn't have to be specifically aimed at hypnotists, any more than Chapter 532 was, in order to adequately protect the public from harm caused by hypnotists.

Summary

The fact that none of the statutes regulating hypnosis have ever been cited or construed in a case involving hypnotism, although some of them have been on the statute books for a half a century, along with the fact that over forty states and territories have never felt any need for such statutes leads to a strong in-

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the owner in this state. Such written appointment shall be acknowledged before some officer authorized to take acknowledgments of deeds and shall be filed in the office of said secretary, and copies certified by him shall be sufficient evidence of such appointment and agreement. Service upon said attorney shall be sufficient service upon the principal, and shall be made by leaving an attested copy of the process with the secretary of the state at his office or with any clerk having charge of the corporation department of said office. When legal process against any owner mentioned in this section is served upon the secretary of the state, he shall immediately notify such owner thereof by mail and shall, within two days after such service, forward in the same manner a copy of the process served on him to such owner or to any person designated in writing by such owner. The plaintiff in the process so served shall pay to the secretary, at the time of the service, a fee of one and one-half dollars for each page, and in no case less than five dollars, which shall be recovered by him as part of his taxable costs if he prevails in such suit. The secretary shall keep a record of all process served upon him which shall show the day and hour when such service was made. (1953, S. 2017d; 1961, P. A. 517, S. 32.) Conn. Rev. Stat. (1958).

56 § 29-139. Financial responsibility. Before exhibiting any amusement in this state the owner shall furnish proof of financial responsibility to satisfy claims for damages on account of any physical injuries or property damage suffered by any person by reason of any act or omission on the part of the owner, his agents or employees in such amount, character and form as the insurance commissioner determines to be necessary for the protection of the public. (1949 Rev. S. § 3721.) Conn. Rev. Stat. (1958).
ference that special statutory regulation of hypnosis is not needed. Present statutes limiting and regulating the practice of the healing arts make therapeutic use of hypnosis by unlicensed persons illegal. Statutes for the protection of children likewise protect the young from harm by hypnotists. Although hypnotic shows may be considered in bad taste by some, this does not seem sufficient reason to make them illegal, so long as persons harmed by hypnotism may recover for the harm caused them.

The best regulation of hypnotism on the statute books today is the Florida statute, mainly because, for the most part, it is merely declaratory of traditional legal principles applied to the use of hypnosis for therapeutic purposes. The Florida statute makes it clear that practicing hypnosis for therapeutic purposes is illegal, unless the hypnotist is a licensed practitioner of one of the healing arts practicing within the scope of his professional license; and it makes it clear that the practitioner is liable civilly for any harm caused the patient by the hypnotic treatment; unfortunately, the language does not make it crystal clear that the practitioner is liable only when he or his agent negligently or intentionally caused the harm. No conduct which should have been lawful under prior law was made illegal by the passage of the Florida hypnosis law. No restrictions of hypnotism which might hinder the further development of hypnosis were enacted. No infringement was made on non-medical uses of hypnosis nor was any change made in the applicable principles of tort liability for non-medical hypnosis. The Florida legislature made no attempt to legislate taste in entertainment. With certain improvements in language, this statute would serve as a desirable model for any legislature which in the future should feel an irresistible compulsion to regulate hypnosis.

Hypnosis should be regulated primarily by tort law liability and any legislation which would clarify and make more certain the tort and agency principles applicable to cases involving hypnosis, clearly abrogating any necessity for meeting the technical requirements of a battery, would be constructive, although there is no indication that the courts are not entirely capable of doing this on their own without the aid of the legislatures. The Connecticut statutes requiring a license for public amusements in certain instances, requiring a non-resident applicant to appoint the secretary of state his attorney for service of process, and requiring all applicants to furnish proof of financial responsibility
before such license is granted seem a good idea for any entertainment show which might cause injury to persons or property. However, a general statute licensing public amusements, requiring proof of financial responsibility and providing for service of process on non-residents must be evaluated not on how it would provide for injured subjects of hypnotic exhibitions, but rather by balancing the extent to which such legislation would increase the collectability of tort claims of plaintiffs injured by public amusements against the undesirability of giving further power and control over the freedom of the public, in this case to produce, perform and enjoy various forms of entertainment, to rapidly expanding state bureaucracies.

I don't believe any special statutory regulation of hypnotism is necessary, and for this reason I believe statutory regulation of hypnosis is undesirable, but in general rather harmless, unless the statute restricts use of hypnotism unduly like the Virginia statute. Cases involving hypnotism arise infrequently, and the courts should be capable of adequately dealing with them. Only if the courts prove themselves unwilling or incapable of adequately dealing with hypnosis, should a legislature step in with a statute similar to the Florida hypnosis law.