Applying the rule of interpretation stated above, I am of the opinion that the payment of one license fee under section 9727, *supra*, by a brokerage firm operating in several counties in the state will suffice to cover all of the brokerage activities of such company, and that it will not be necessary for such firm to procure a separate license and pay the stated fee in each county in which it operates.

MEDICAL REGISTRATION AND EXAMINATION, BOARD OF: Whether letters advertising "beauty baths for women" constitutes practice of medicine.

December 5, 1933.

Indiana State Board of Medical
Registration and Examination,
Room 5, State House Annex,
Indianapolis, Indiana.

Dear Sirs:

I have before me your letter concerning certain circular form letters advertising the administration of so-called "Beauty Baths for Women." You inquire whether the use of these letters for advertising purposes and/or the administering of said baths, as set out therein, constitute the practice of medicine within the meaning of section 12243 of Burns 1929 Supplement to Burns Annotated Indiana Statutes of 1926.

The above section, insofar as necessary for the consideration of your questions, provides as follows:

> "To open an office for such purpose, or to announce to the public in any way a readiness to practice medicine in any county of the state, or to prescribe for, or to give surgical assistance to, or to heal, cure or relieve, or to attempt to heal, cure or relieve those suffering from injury or deformity, or disease of mind or body, or to advertise, or to announce to the public in any manner a readiness or ability to heal, cure or relieve those who may be suffering from injury or deformity, or disease of mind or body, shall be to engage in the practice of medicine within the meaning of this act: *Provided, That nothing in this act shall be construed to apply to or limit in any manner the manufacture, advertisement or sale of proprietary medicines.* * * *

> Provided, however, That this law shall be construed as applying only to those persons who pretend, claim, assert, or advertise that they *diagnose, or in any manner physically treat human disease, injury or deformity,* and shall not apply to those who endeavor to prevent or cure disease or suffering by spiritual means or prayer. * * * and, Provided, further, That *this act shall not be construed to apply to* non-itinerant optometrists who are at this time engaged in, or who may hereafter engage in the practice of optometry in this state, nor to *professional or other nurses, nor first aid or pharmacists* in their professional duties. * * *" (Our italics.)

(Note: The asterisks indicate parts of the statute which have been omitted because it is believed such parts have no relevancy to the question submitted.)

The letters referred to by you are two in number, one of which apparently is designed for mailing to the general public and the other for mailing to physicians.

The one designed apparently for mailing to the general public opens with five questions as follows:

> "Does your soul need soothing? Do you curve in the wrong place? Is your skin skimpily nourished? Do your insides feel upside down? Would you like to relax for an hour or two?"

Thereupon the letter continues:

> "Ah, then, READ THIS. ..... *has done something for the jumpy nerves, the tired skin, the unglamorous feeling of modern women. In conjunction with the beauty salon, we announce the opening of*
>
> *Beauty Baths for Women*
>
> They're as sumptuous as the Roman baths of Caracella. Pink marble walls that soothe your very soul. *Exercises that bring alive long-dead muscles. Cuticle rubs and salt glows that make your skin like velvet. Steam baths that soak out all the irritability of soul and body. Needle showers that pepper you with energy. Sunshine baths that bring complete relaxation to your harried mind.* You'll come from the Roman bath of ..... feeling as lovely as a dew-washed rose.

"The baths are complete with individual steam rooms and dressing rooms. They also feature special lotions for reducing as well as massages that build you up in one place and smooth you down in another. One of the highly specialized departments is the one for

Colon Therapy Treatments Given ONLY by order of Your *Personal Physician*

for unhealthful obesity, toxic colon conditions, headaches, arthritis, rheumatic disorders, constipation and indigestion. This department is under the direct supervision of a *trained nurse.*"

The above language abounds in its glowing description of these "Beauty Baths for Women" but I doubt whether anything can be found in it which can be considered as an offer to prescribe for or to heal, cure or relieve, or attempt to heal, cure or relieve those suffering from injury or deformity or disease of mind or body within the meaning of the statute, unless it be the colon therapy treatments which are advertised as given only by order of "your personal physician" and under the direct supervision of a "trained nurse." So far as the circular is concerned, there is no offer to diagnose a case nor is there any pretense that such is to be done. It is, of course, true and it has been so held that the fact that no drugs are used does not in and of itself prevent an attempt at healing from being the practice of medicine. Witty v. State, 173 Ind. 404. But in the case under consideration, the object does not seem to be healing, but refreshment and stimulation to restore beauty. Note the following: "Exercises that bring alive long-dead muscles." Is the direction of physical culture the practice of medicine? Note further: "Cuticle rubs and salt glows that make your skin like velvet." No one could rightfully believe that the above language contained the proposal to cure skin diseases. "Steam baths that *soak out* all the irritability of soul and body." "Needle showers that *pepper* you with energy." "*Sunshine baths* that bring complete relaxation to your harried mind." And then to sum it all up: "You'll come from the Roman bath of ..... feeling as *lovely as a dew-washed rose.*" I do not think this purports to be the practice of medicine within the meaning of the statute. What may be actually done when a person presents herself and asks to have one of these baths administered may be quite

another thing. The attendant may, in fact, be practicing medicine, which must be determined upon the basis of what actually takes place, but I do not think the use of the circular referred to by you as an advertisement of the so-called "Beauty Baths" in and of itself is a violation of the statute.

The circular designed for mailing to physicians does not, in my opinion, change the situation. It is an invitation to physicians to make use of the equipment and staff of the advertiser to administer treatments prescribed by such physicians in much the same way as a nurse might be called upon to administer them. The statute expressly provides that it "shall not be construed to apply * * * to professional or other nurses."

HIGHWAY COMMISSION: Right of county boards of commissioners to acquire land by eminent domain for widening county roads.

December 6, 1933.

Hon. M. R. Keefe, Chief Engineer,
State Highway Commission of Indiana,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter requesting an opinion as to the right of the boards of commissioners of the several counties of the state to acquire land by eminent domain with which to widen county roads. The reason for this request is revealed by the following statement of facts as set out in your letter, viz.:

> "The state highway commission have attempted to improve certain county roads under the authority granted in the state highway law enacted in 1933 permitting them to enter into agreements with the federal authorities to receive federal grants. The federal grant with which this work is being done comes under the National Recovery Act and the funds were allotted to the department of agriculture to be supervised by the bureau of public roads, and the projects are termed 'NRA Projects' under the rules and regulations of the department of agriculture. According to the rules and regulations of the department of agriculture, these