

THE FIRST MEDICAL INFORMED CONSENT STATUTE - DESERET (1851): THE USE OF LAWS REQUIRING CONSENT TO DISCOURAGE DISFAVORED MEDICAL PROCEDURES

By Robert D. Miller, J.D., M.S. Hyg.
Honorary Fellow
Medical History and Bioethics Department
School of Medicine and Public Health
University of Wisconsin - Madison

Copyright 2020 - Robert D. Miller
No copyright is claimed for quotations. The owner retains the copyright, if
any, in quotations.

On January 16, 1851, the legislature of the Provisional State of Deseret (renamed Utah when it became part of the United States) enacted the earliest known Anglo-American law requiring informed consent to health care as section 7 of its Criminal Laws.

Laws and court decisions addressing consent to health care existed prior to the Deseret law, but none affirmatively required informed consent.

THE LAW OF MEDICAL CONSENT PRIOR TO 1851

Prior to 1851, there were few known Anglo-American colonial or state laws requiring consent to medical treatment, but they did not require that the consent be informed. In 1649, the Massachusetts Colony passed a law requiring consent for innovative medical practice.¹ In 1665, in a slightly modified form, this same law was adopted in the New York Colony as part of the Duke of York's Code.² In 1676, the Duke of York's Code was readopted and extended to apply to territories on the Delaware River, including what later became Pennsylvania and Delaware.³ The United States Congress passed a law in 1838 requiring physicians practicing in the District of Columbia to be members of the Medical Society of the District of Columbia, but exempting persons who provided treatment "with the consent of the person or the attendants of the person" and

¹ THE GENERAL LAWS AND LIBERTIES OF THE MASSACHUSETTS [sic] COLONY (Cambridge, Mass.: Samuel Green 1672); reprinted in *Comm. v. Thompson*, 6 Mass, 134, 140 (1809)

² *The Medical Profession*, Chapter XIII, of THE HISTORY OF NEW YORK STATE (Lewis Historical Publishing Company, Inc., 1927)

³ *Anonymous*, 1 Dall. 1 (Pa. Sept. Term 1754), note 1, at page 2 in Fourth Edition (New York: Banks & Brothers 1889)

without payment.⁴ In 1847, Washington, D.C., adopted an ordinance requiring consent in the Washington Asylum before surgical operations could be performed.⁵

Prior to 1851, there were a few court decisions imposing civil or criminal liability for lack of consent,⁶ as well as some decisions finding that consent protected practitioners from criminal penalties.⁷ However, none of the decisions imposed liability on health care practitioners who obtained consent for failure to provide information before obtaining that consent. There was at least one case in which liability was imposed for misrepresentation in obtaining consent for treatment.⁸

The 1851 Deseret law stands alone in legally requiring specific information to be given to patients before legally required consent could be obtained.

DESERET AND ITS MEDICAL CONSENT LAW

Many of the members of the Church of Jesus Christ of the Latter Day Saints⁹ moved into the Salt Lake Valley in 1847. It was then part of Mexico. In

⁴ Chapter CCLIX – *An Act to revive with amendments, an Act to incorporate the Medical Society of the District of Columbia.* July 7, 1838. 25th Cong, Sess. II, chap. 259 - 6 Stat 741

⁵ *An act for the government of the Washington Asylum – Apr. 5, 1847,* CORPORATION LAWS OF THE CITY OF WASHINGTON (1860), 282

⁶ E.g., *Slater v. Baker and Stapleton*, 2 Wils. 359, 95 Eng. Rep. 860 (C.P. 1767) (civil liability); *Trial of John Johnson*, POST BOY AND VERMONT AND NEW-HAMPSHIRE FEDERAL COURIER (Windsor Vt.), Mar. 19, 1805, 9 (criminal liability)

⁷ E.g., *Commonwealth v. Thompson*, 6 Mass. 134 (1809) [acquitted of manslaughter based on consent]; but see *Rex v. John St. John Long*, 4 C. & P. 423, 439, 172 Eng. Rep. 767 (Old Bailey Feb. 19, 1831) [consent not a defense, but jury acquitted]; N.S. Davis, *Art. VI. - Medico-legal inquiry; or, a report of the evidence taken in the case of the People vs. Riley Drake, on an indictment for manslaughter in the fourth degree, tried at Binghampton, May, 1844*, N.Y. JOURNAL OF MEDICINE AND COLLATERAL SCIENCES, 3(9): 343 (Nov. 1844) [manslaughter conviction; consent not a defense]

⁸ *Pedda Day v. John Dexter*, BOSTON DAILY ADVERTISER, Oct. 22, 1816, 2; NATIONAL ADVOCATE, Oct. 24, 1816; *Keene, (N.H.)*, Oct. 19, DEDHAM GAZETTE (Mass.), Oct. 25, 1816, 3; NEW YORK SPECTATOR, Oct 26, 1816, 2; DAILY NATIONAL INTELLIGENCER (DC), Nov. 2, 1816; see also *Hupe v. Phelps*, 2 Stark. 480, 171 Eng. Rep. 711 (1819); *Quack doctors - Hube v. Phelps*, TIMES (London), Mar. 6, 1819, 3 [practitioner denied payment based on fraudulent professions of skill; note that case report and newspaper reports spelled name differently]

⁹ Members of the Church of Jesus Christ of the Latter Day Saints have been called *Mormons*. In 2018 church leaders sought to reduce the use of this term, so

1848 the area became part of the United States pursuant to the Treaty of Guadalupe Hidalgo. The residents of the Great Salt Valley and vicinity created the Provisional State of Deseret in 1849. It was the de facto government of the area that is now Utah, Nevada, and parts of several other western states. In 1849, Deseret requested territorial status from the United States Congress. In September 1850, a law was enacted providing for organizing the Territory of Utah. It included all of present Utah and parts of Nevada, Colorado and Wyoming.¹⁰

During the period of organization, the Deseret government continued to function. In January 1851 Deseret adopted a law making it a crime to provide certain medical treatments without informed consent¹¹ [See Addendum A for the text of the law]. The law applied to “any doctor, physician, apothecary, or any other person.” It prohibited providing any of a long list of treatments without informed consent. The prohibited treatments included:

- > “any deadly poison, whether animal, mineral or vegetable, such as quicksilver, arsenic, antimony, or any ... preparations therefrom,”
- > “cicuta, deadly nightshade, hen-bane, opium or any of the diversified preparations therefrom,”
- > “any drugs, medicines, or other preparations, such as chloroform, ether, exhilarating gas, calculated in their nature to destroy sensibility.”

The law required explaining “fully, definitely, critically, simply and unequivocally... in plain, simple English language, the specific nature, operation and design of said poison or poisonous preparation about to be or intended to be given.” The information had to be given “to the patient and surrounding friends and relatives, such as father, mother, husband, wife, children, guardian or others.” The law further required “procuring the unequivocal approval, approbation and consent of the patient, if of mature years and sound mind, and of parents, guardians, or other friends.” The consent was required to be “the full and free assent of said patient and friends.”

A violation was declared to be a “high misdemeanor” “punishable by a fine of any sum not less than one thousand dollars and by imprisonment or

it will not be used in this paper except in quotations or titles where the term is used.

¹⁰ POLITICAL HISTORY OF NEVADA (Eleventh Edition) issued by Dean Heller, Nevada Secretary of State (Carson City, Nev.: State Printing Office 2006), 64-70- posted at http://nsla.nv.gov/Archives/Political_History_of_Nevada_2006/ [accessed 10 Oct. 2014]

¹¹ LAWS AND ORDINANCES OF THE STATE OF DESERET (UTAH) COMPILATION 1851: BEING A VERBATIM REPRINT OF THE RARE ORIGINAL EDITION, WITH AN APPENDIX (Salt Lake City: Shepard Book Company 1919), 26-27

confinement of the practitioner to hard labor for any time not less than one year.” If death resulted from a violation, it was declared manslaughter or murder.

The law applied only to treatment of a citizen of the State of Deseret. It expressly did not apply to treatment of persons travelling through Deseret who were not citizens.

The first legislature of the Territory of Utah convened in September 1851 and the laws that had been created by the Deseret were reenacted as the laws of the new territory. On March 6, 1852, the legislature enacted an identical law (changing only references to the State of Deseret to the territory of Utah) as section 107 of Chapter XXII of Title IX (Offenses against Public Health), as part of its new criminal code.¹² The law was quoted at length in Chief Justice McKean’s charge to the grand jury in October 1874.¹³ However, this law apparently ceased to apply in 1876. It was not included in the new penal code approved for the territory on Feb. 18, 1876.¹⁴ Utah became the 45th state on January 4, 1896.¹⁵

CONTEXT OF THE DESERET CONSENT LAW

The focus of the Deseret consent law was on discouraging heroic medicine, anesthesia, and certain other treatments. Informed consent was offered as an exception to liability for using these modalities.

This consent law probably arose out of the general opposition of many of the Latter Day Saints to the allopathic medicine of that era that involved use of the treatments listed in the law. They believed the heroic allopathic medicine of the time to be dangerous for their members and sought to protect them from

¹² *An Act in Relation to Crimes and Punishments*, ACTS, RESOLUTIONS AND MEMORIALS PASSED BY THE FIRST ANNUAL, AND SPECIAL SESSIONS, OF THE LEGISLATIVE ASSEMBLY OF THE TERRITORY OF UTAH (G.S.L. City Utah: Brigham H. Young 1852), 117-143, at 138-139; ACTS, RESOLUTIONS AND MEMORIALS PASSED AT THE SEVERAL ANNUAL SESSIONS OF THE LEGISLATIVE ASSEMBLY OF THE TERRITORY OF UTAH (Great Salt Lake City, Utah 1866), 59-60

¹³ DESERET EVENING NEWS, Oct. 7, 1874; see also *Judge McKean’s charge*, DAILY OGDEN JUNCTION, Oct. 9, 1874, 2 [critiquing the charge]; *That precious charge again*, DESERET EVENING NEWS (Salt Lake City), Oct. 17, 1874 [“His honor then complains of the territorial law forbidding a physician to poison a patient without the patient’s consent, of which we need say no more.”]

¹⁴ THE COMPILED LAWS OF THE TERRITORY OF UTAH (Salt Lake City, Utah 1876), 564 et seq.

¹⁵ President Grover Cleveland, *Proclamation 382 - Admitting Utah to the Union* (Jan, 4, 1896)

such medicine. At that time, the Latter Day Saints favored reliance on prayer and herbal remedies, especially Thomsonian medicine.¹⁶

Thomsonian medicine was a system of botanical practice and steam-sweating that was developed in New England in the early 1800s by Samuel Thomson.¹⁷ In 1809, Thomson was involved in one of the early American cases involving consent to medical services. He was tried for murder for the death of his patient Ezra Lovett, Jr. The jury charge included: "Now, there is no law which prohibits any man from prescribing for a sick person with his consent, if he honestly intends to cure him by his prescription." [*Emphasis added*] Thomson was acquitted.¹⁸ In 1813, 1823 and 1835, Thomson obtained United States patents for his system and then sold to individuals the right to use the system either for a family or as a practitioner. The system was spread widely through his book on domestic medicine, *NEW GUIDE TO HEALTH*. Persons who purchased the book became members of Friendly Botanical Societies. Thomson's agents formed local chapters. In 1833, he had 167 agents distributed nationwide. National conventions were held. A substantial percentage of the population became members, for example, it was estimated that one-sixth of Bostonians and one-third of Ohioans were members.¹⁹

As to the medicines restricted in the Deseret consent law, there was also uncertainty about their use among allopathic medical doctors with some allopathic medical doctors questioning the use of some of these medicines. Some allopathic practitioners had already curtailed use of some of these treatments and this change increased in the ensuing decades.

¹⁶ J. Cecil Alter, *Addenda (D) - Prejudice against doctors and spiritual*, UTAH HISTORICAL QUARTERLY, 10:40-43 (1942); *Addenda (E) - Samuel Thomson, herb doctor or botanical physician*, 10:44-48; Thomas J. Wolfe, *Steaming saints; Mormons and the Thomsonian movement in nineteenth-century in America*, in Martha Lee Hildreth and Bruce T. Moran (eds.), *DISEASE AND MEDICAL CARE IN THE MOUNTAIN WEST* (Reno, Nev.: University of Nevada Press 1998), 18-28 [Hereinafter WOLFE], at 25-26; Robert T. Divett, *Medicine and Mormons: A historical perspective*, DIALOGUE: A JOURNAL OF MORMON THOUGHT, 12(3):16-25 (Autumn 1979)

¹⁷ His name is spelled "Thompson" in some places, but his own writings and official publications where he controlled the spelling used "Thomson."

¹⁸ *Commonwealth v. Thompson*, 6 Mass. 134 (1809)

¹⁹ *The Thompson Movement*, chapter 7 of William G. Rothstein, *AMERICAN PHYSICIANS IN THE 19TH CENTURY* (Baltimore: Johns Hopkins Univ. Press 1972) [Hereinafter ROTHSTEIN], 125-151; Samuel Thomson, *NEW GUIDE TO HEALTH; OR BOTANIC FAMILY PHYSICIAN* (Boston: E.G. House 1822); Robert T. Divett, *Medicine and Mormons: A historical perspective*, DIALOGUE: A JOURNAL OF MORMON THOUGHT, 12(3):16-25 (Autumn 1979)

Later the Latter Day Saints also changed their position accepting much of allopathic medicine. For example, in 1872 Brigham Young sent his nephew to be trained as doctor at the College of Physicians and Surgeons (now Columbia University) in New York City. After graduation, he returned to practice in Utah.²⁰ This may have contributed to the disappearance of the consent law from the laws of Territory of Utah in the new criminal code of 1876.

WILLARD RICHARDS

It is likely that Willard Richards had a significant role in the enactment of the Deseret (and later Utah) consent law.²¹ He was a leader in the church, in government matters and in health matters. He was a Thomsonian practitioner who had practiced in Massachusetts.²² In 1849, with other Thomsonians, Richards organized and was the Chairman of the Council of Health in Salt Lake City and its meetings were held in his home. Another founder, William Morse, stated that the purpose of the Council was to promote “the superiority of botanical practice.”²³ The related goal of discouraging allopathic practice was also made clear in the announcement of the formation of the Council in the *Deseret News* (the weekly Salt Lake City newspaper edited by Richards):

Though we may fail to convince some of the superiority of botanic practice, we feel confident that our exertions, under this head, will shake the faith of many in the propriety of swallowing, as they have long done, with implicit confidence, the most deleterious drugs, under the sole authority and responsibility of technicalities.²⁴

Beyond the Council, Richards had many other roles. He served as the private secretary of Joseph Smith and was a cousin of Brigham Young.²⁵ In 1840, he was ordained as an Apostle of the church.²⁶ In 1847, Richard became a member

²⁰ Robert T. Divett, *Medicine and the Mormons*, BULLETIN OF THE MEDICAL LIBRARY ASSOCIATION, 51(1):1, at 9 (Jan. 1963)

²¹ WOLFE, at 25-26

²² Devery S. Anderson, *From doctor to disciple: Willard Richard's journey to Mormonism*, JOURNAL OF MORMON HISTORY, 38(2):67, at 87 (2012) [Hereinafter DOCTOR TO DISCIPLE]; Orson Ferguson Whitney, HISTORY OF UTAH (Salt Lake City, Utah: George Q. Cannon 1904), Vol. 4, 21-25 [Hereinafter WHITNEY'S HISTORY].

²³ J. Cecil Alter, Addenda (A) - *The Council of Health*, UTAH HISTORICAL QUARTERLY, 10:37-39 (1942); WOLFE, at 26

²⁴ W.M.A. Morse, *Mr. Editor*, DESERET NEWS, June 15, 1850, 5, as quoted in DOCTOR TO DISCIPLE, at 97; WHITNEY'S HISTORY, Vol. 4, 25 [about the Deseret News]

²⁵ Blanche E. Ross, *Early Utah medical practice*, UTAH HISTORICAL QUARTERLY, 10:1, at 17-18 (1942)

²⁶ WHITNEY'S HISTORY, Vol. 4, 22

of the First Presidency of the church, being designated the second counselor to President Brigham Young.²⁷

Richards was elected the Secretary of State of the Provisional Government of Deseret on March 12, 1849.²⁸ In July 1849, as Secretary of State, Richards certified the MEMORIAL OF THE MEMBERS OF THE LEGISLATIVE COUNCIL OF THE PROVISIONAL STATE OF DESERET PRAYING FOR ADMISSION INTO THE UNION AS A STATE, OR FOR A TERRITORIAL GOVERNMENT.²⁹ In 1851, in the same role, he published a compilation of the laws of the State of Deseret.³⁰ He was the President of the Legislative Council of the Territory of Utah in 1852 when the medical consent law was reenacted for the Territory.³¹

Clearly, Richards was in the middle of the process that resulted in the 1851 consent law, although his actual role remains unknown.

AMBIGUITIES OF THE LAW

The Deseret consent law is important for introducing the requirement of informed consent. However, it is doubtful those who wrote the law intended to promote the use of this informed consent. The law was so poorly (or cleverly) worded that a practitioner who wanted to obtain the required consent and fit in the exemption could not determine what to do. For example, although the law provides a long list of examples of those who can provide consent, nowhere does it state which combination of people could give consent that would comply. In some places “friends” is preceded by an “or” and some places by an “and,” so it is not clear whether consent of friends is an alternative or a separate requirement.

Further, the consent law prescribed only the minimum penalty, placing no limit on the penalty to be imposed. Today criminal statutes must prescribe the maximum penalty.

This law was quoted in an 1881 article as a “grotesque” example of almost every objectionable feature of bad statutory writing.³² It is possible the poor wording was due to the general rejection of the legal profession by the Latter Day

²⁷ WHITNEY’S HISTORY, Vol. 4, 25

²⁸ WHITNEY’S HISTORY, Vol. 4, 25

²⁹ *Miscellaneous No. 10* [Senate], 31st Congress, 1st Session (Ordered to be printed December 27, 1849)

³⁰ See note 11, *supra*

³¹ WHITNEY’S HISTORY, Vol. 4, 25

³² Francis Wayland, *Opening address before the American Social Science Association on certain defects in our method of making laws*, JOURNAL OF SOCIAL SCIENCE, 14:1, 9-11 (Nov. 1881)

Saints at that time.³³ It is clear that the poor drafting added to its success in discouraging disfavored medical procedures.

No case has been located where the law was enforced against an individual. However, few allopathic physicians successfully practiced in Utah during the period the law was in effect, so the deterrent effect may have precluded opportunities for enforcement. On May 15, 1852, *The Deseret News* in Salt Lake City published an article on page 3 that included:

Health of the city good. Two physicians have recently removed to one of our distant settlements and gone in farming, three more have taken to traveling and exploring the country, three have gone to California to dig gold, or for some other purpose, and one has gone to distilling... Those physicians who remain, have very little practice, and will soon have less, (we hope).³⁴

THE USE OF CONSENT LAWS TO DISCOURAGE DISFAVORED MEDICAL PROCEDURES

Deseret was not the first to propose using difficult consent procedures as a way to discourage disfavored medical procedures.

One early opponent of smallpox inoculation proposed onerous consent requirements as a deterrent to inoculation. Smallpox epidemics had been regularly occurring with about one in five of those contracting the disease dying. Those who survived became immune. In the 1720s the wife of an English diplomat to Turkey learned that some practitioners in Turkey deliberately gave healthy persons smallpox, leading to immunity, with a much lower death rate. This process of inoculation was then introduced in England and was very controversial with strong advocates and opponents. One opponent anonymously published a proposal in 1722 that Parliament should prohibit inoculation, and if it could not, that it impose regulations, including required written consent from several relatives before children could be inoculated [See Addendum B for the proposed requirements].³⁵

³³ Orma Linford, *The Mormons, the law, and the Territory of Utah*, AMERICAN JOURNAL OF LEGAL HISTORY, 23(3): 213-235 (July 1979)

³⁴ On the same page, the newspaper published report of a meeting of the Council of Health ‘ Great exertions are being made by the sisters to prepare themselves to nurse each other...’ It also included a two column piece against using poisons for medicine.

³⁵ THE NEW PRACTICE OF INOCULATING THE SMALL-POX CONSIDER’D, AND A HUMBLE APPLIATION [sic] TO THE APPROACHING PARLIAMENT FOR THE REGULATION OF THAT DANGEROUS EXPERIMENT (London: T. Crouch 1722), 37-39.

More recently, those opposing abortion have advocated requiring that information be given to patients with the intention of discouraging the use of abortion. Since the 1970s, there have been numerous laws enacted which impose special consent requirements for abortion, including requirements that information be given that is designed to convince women not to have abortions. In 1983, the United States Supreme Court found requirements of specific statements designed to influence choice to be unconstitutional. The Court reversed its position in 1992, permitting laws that mandated that physicians provide specific information.³⁶

CONCLUSION

The Provisional State of Deseret pioneered imposing a legal requirement of informed consent by statute in 1851. Whether it was done to protect the public or to discourage allopathic medicine or both, it was a significant step in the development of legal regulation of medical practice. Patient autonomy was not yet recognized; rather, the Deseret law required consent to be given not only by the patient but also by family and friends, reflecting the community focus of the Latter Day Saints at that time. However, the legislature did choose to require information to be given to this group (patients, family and friends) and to let them decide, rather than having the state decide.

³⁶ *City of Akron v Akron Center for Reproductive Health, Inc.*, 462 U.S. 416 (1983); *Planned Parenthood of Southeast Pennsylvania v. Casey*, 505 U.S. 833 (1992).

ADDENDUM A - 1851 LAW

Section 7 of the Criminal Laws of the State of Deseret, enacted January 16, 1851:

If any doctor, physician, apothecary, or any other person shall give communicate or administer, or by their influence counsel, advice, persuasion, suggestion or by any means whatsoever give or cause to be given by themselves directly or indirectly, or through the aid or medium of any other person or persons, agency or means whatever any deadly poison, whether animal, mineral or vegetable, such as quicksilver, arsenic, antimony, or any mercurial, arsenical or antimonial preparations therefrom, or cicuta, deadly nightshade, hen-bane, opium or any of the diversified preparations therefrom, or any drugs, medicines, or other preparations, such as chloroform, ether, exhilarating gas, calculated in their nature to destroy sensibility, from any other poisonous minerals or vegetables, to any citizen of the Territory of Utah, whether sick or well, old or young, man, woman or child, under the pretense of curing disease, or from any real or pretended cause, influence, argument, or from any design or purpose whatsoever, without first explaining fully, definitely, critically, simply and unequivocally to the patient and surrounding friends and relatives, such as father, mother, husband, wife, children, guardian or others, as the case may be, and in plain, simple English language, the specific nature, operation and design of said poison or poisonous preparation about to be or intended to be given, and procuring the unequivocal approval, approbation and consent of the patient, if of mature years and sound mind, and of parents, guardians, or other friends, to the giving, administering or communicating said poison so intended, said doctor, physician, apothecary, person or persons so administering said poison, without the full and free assent of said patient and friends, shall be adjudged guilty of a high misdemeanor, and be punishable in any sum not less than one thousand dollars and be imprisoned or confined to hard labor for any time not less than one year; and if the death of the patient or person so receiving the poison, as above specified, shall follow the taking of the same, without being made acquainted with the nature thereof, then the doctor, physician, apothecary, person or persons so giving or causing to be give in said poison, shall be adjudged guilty of manslaughter or murder, as the case may be, by any court having jurisdiction, and be punished according to law for such crimes; Provided, that the administration of poisons, as specified in the forepart of this section, and the penalties thereof shall not attach to doctors, physician and apothecaries, having their own drugs, poisons and medicines accompanying and administering to companies and individuals traveling through the State, the same not being citizens of the State; but all such doctors and companies so traveling may administer to and receive of their

own drugs, poisons or medicines, with good intent, on their own responsibility.³⁷ [*underlining added*]

ADDENDUM B - 1722 PROPOSAL TO REQUIRE WRITTEN CONSENT FOR INOCULATION

In a Word then to prevent the Mischiefs, which may happen from the wicked Designs of Men abandon'd to Crime, I humbly move that if this practice of Inoculating of the *Small-Pox* should be permitted to be in use among us, some Limitations may be put upon both the Practice, and the Persons that may be concern'd in it such as may best secure the Lives of Innocent Children, who cannot resist the Operation for themselves, or give a Negative in the Resolutions that may be taken about them: Such as these,

1. That no Father-in-Law, or Mother-in-Law be allowed in any Case whatever, to Cause any of the Children under their Care to be Inoculated without the Consent of three of the nearest Relations of the Child, by the Mother's Side, if a Father-in-Law, or by the Father's side, if a Mother-in-Law, and in their Presence; their Consent to be signify'd in Writing, sign'd in the Presence of at least one Justice of the Peace.

2. That no Guardian of any Orphan Child, under Age, and for, and to whom, or to any one else for the use of the said Orphan, the said Guardian has any Trust, or any Account to give, shall be allow'd to Cause, or Suffer any such Orphan to be Inoculated on any Account, or with any Limitations whatsoever.

3. That no Person, who is Heir at Law, or who has any Remainders or estate in Reversion after any Person whatsoever, shall Cause, or Procure the Person possessing such Estate to be Inoculated, as above.

4. That no Person, who has ensur'd the Life of another by Policy of Insurance, or Grant of possessing any Office, or other Benefit, after and by the said Person's decease, shall Cause, or Procure, or to his Power, suffer the said Person to be Inoculated, as above.

5. That no Person, who pays any Annuity for Life, Fee-Farm, Rent, or any Pension, or Payment whatsoever, Terminating with Life of th person to whom the same is Payable, shall Cause, or Procure, or Suffer the Person, so receiving the said Annuity, Rent, Pension, or Payment to be Inoculated, as above.

6. That the Physician, or Surgeon advising, or performing the Operation on any such Person so prohibited should for ever be made incapable of Practicing, and shall pay a Fine of 500 l. and for the second Offense be

³⁷ LAWS AND ORDINANCES OF THE STATE OF DESERET (Salt Lake City, Utah: Shepard Book Co. 1919), 26-27.

Transported; and if the Person so Inoculated should die, the said Persons causing, or procuring it to be done, and the Physician and Surgeon also knowing the Person to be within the said Limitations should suffer death.

7. That no Operation for Inoculating the *Small-Pox* on any Infant whatsoever shall be perform'd but in the Presence, and with the Consent of both the Father and Mother of the said Child, if living, and if no Father and Mother, then in the Presence, and with the Consent of three at least of the nearest Relations signify'd as in the Article before a Justice of the peace.

8. That no Operation for the Inoculating the *Small-Pox* on any Person whatsoever shall be perform'd, but in the Presence and by, and with the assistance of two known Practicing Surgeons at least, and one Licensed Physician, who shall have the Power to inform themselves upon Oath, or otherwise, of the due Consent of all Persons requir'd by this Act.

These are some of the Limitations, which I think will be found Necessary for the better Regulating this Novelty among us, if it must be admitted among us;...³⁸ [*underlining added*]

³⁸ THE NEW PRACTICE OF INOCULATING THE SMALL-POX CONSIDER'D, AND A HUMBLE APPLIATION [sic] TO THE APPROACHING PARLIAMENT FOR THE REGULATION OF THAT DANGEROUS EXPERIMENT (London: T. Crouch 1722), 37-39.